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NO. 56560-5-I

IN THE COURT OF APPEALS
OF THE STATE OF WASHINGTON
DIVISION I

ROBERT BATES; B&H CONSTRUCTION SERVICES, INC., a
Washington corporation; and BANNER BANK (Bellingham), Bond Acct.
#3540233253,

Appellants,

vs.

JULIANNE McGUIRE,

Respondent.

APPEAL FROM WHATCOM COUNTY SUPERIOR COURT
Honorable Steven Mura, Judge

BRIEF OF RESPONDENT

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I. INTRODUCTION

This case involves a dispute between a contractor (Mr. Bates and his corporation, B&H Construction Services, Inc.) and a homeowner (Ms. McGuire) over poor workmanship and the cost of repair. On May 26, 2005, Ms. McGuire hired B&H Construction Services, Inc., through Mr. Bates, mainly to remodel the kitchen of her condominium unit. Mr. Bates completed the project in September 2005. Within only a couple months of use, Ms. McGuire noticed water stains on her cabinets and backsplash, as well as several of the cabinet joints were not properly sanded and glued. Ms. McGuire reported the problems to Mr. Bates and he inspected the cabinets and backsplash. He denied all responsibility and placed the blame on Ms. McGuire. She was not satisfied with Mr. Bates explanation. After many conversations and getting nowhere with Mr. Bates, Ms. McGuire reported the incident to the Better Business Bureau, which also proved to be unfruitful.

Ms. McGuire ended up contacting several other contractors to get bids to make the necessary repairs. Ms. McGuire chose the lowest bid, which was \$2,166, and had the work completed by Grain & Shine Woodworking in March 2006. Ms. McGuire (pro se) filed a summons and complaint on March 14, 2006 for the cost of repairs. Still getting nowhere

with Mr. Bates and now his attorney, Ms. McGuire was forced to hire an attorney in June 2006 and consequently amended her complaint to include a request for attorney's fees under RCW 18.27.040(6). Upon motion of Ms. McGuire, this case was transferred to Mandatory Arbitration on January 14, 2007. On February 22, 2007 (12 days prior to the scheduled Arbitration Hearing), Mr. Bates delivered his RCW 4.84.250-280 settlement offer to Ms. McGuire for \$2,180. On February 27, 2007, Ms. McGuire delivered an acceptance of said settlement offer to Mr. Bates. Ms. McGuire filed a motion for attorney's fees with the arbitrator, which was denied. Ms. McGuire timely filed her request for trial de novo. Mr. Bates did not pay Ms. McGuire the \$2,180 settlement amount. Prior to the trial date, Ms. McGuire brought a motion to enforce the settlement agreement and for attorney's fees. Ms. McGuire's motion was granted and Judgment was entered. Mr. Bates timely filed his appeal of Ms. McGuire's award of attorney's fees to this court. Mr. Bates still has not paid Ms. McGuire anything.

II. RESTATEMENT OF THE FACTS

This was a case brought by the Respondent Julianne McGuire (hereinafter "Ms. McGuire") against Appellants Robert Bates, B&H

Construction, Inc., and their contractor's bond (hereinafter "Bates") for poor workmanship and consequently to recover the actual cost of correcting errors in construction (CP 83-87). The contract was to remodel Ms. McGuire's kitchen and other items, for a total cost of \$12,720 (CP 80, 84, & 86). Ms. McGuire paid the full contract amount, and only discovered the problems with the cabinets after full payment had been made (CP 80 & 84). After a brief stint as a pro se litigant, Ms. McGuire was forced to hire an attorney to pursue her claim and to file a second amended complaint that included a request for reasonable attorney's fees, interest, and costs under RCW 18.27.040 (CP 27 & 83-87). The underlying claim for the cost of correction was precisely \$2,166.00, which Bates refused to pay. (CP 86)

Nearly a year after commencing her suit, and after several lower offers of settlement, Bates offered, "pursuant to RCW 4.84.250-280" exactly \$2,180.00 in settlement of all claims. (CP 46-47) This amount was \$14.00 more than the claim.

Ms. McGuire accepted the offer as it was written, with no change or modification in the acceptance. (CP 49)

A mandatory arbitration hearing was held, solely for the purpose of determining Ms. McGuire's motion for attorney's fees, costs, and

prejudgment interest on the liquidated amount. The arbitrator determined that no fees would be allowed. Ms. McGuire timely requested a trial de novo (CP 92-93), and a similar hearing for determination of fees and costs was held in Superior Court. The Court determined that fees and costs should be allowed (CP 9-12, 7-8).

At no time has Bates paid any amount to Ms. McGuire on the subject claim (CP 7-8). Therefore, it became necessary to eventually enter Judgment on the claim (\$2,180) as well as for fees incurred pre and post arbitration, and prejudgment interest and costs of litigation. (CP 7-8)

Bates timely appealed the Judgment, Findings and Conclusions of Law. (CP 3-6)

III. ARGUMENT

1. THE STANDARD OF REVIEW IN THIS CASE IS WHETHER THE TRIAL COURT ABUSED ITS DISCRETION

A trial court's determination on attorney's fees is reviewed for an abuse of discretion. A typical example is the case of *Legal Foundation v. TESC*, 44 Wn.App. 690, 723 P.2d 483 (1986). In *Legal Foundation*, the Court reviewed a determination of the trial court denying attorney's fees

requested for a frivolous action under RCW 4.28.185. The Appellate Court set forth the rule in Washington succinctly:

“[3] In its cross appeal, Evergreen argues that the BRLF's action was frivolous and that the trial court thus erred in concluding that it was not entitled to attorney's fees pursuant to RCW 4.28.185.[fn2] This court, however, will not overturn a decision to grant or deny attorney's fees absent a showing of abuse of discretion. See *Meyer v. UW*, 105 Wn.2d 847, 856, 719 P.2d 98 (1986); *Herman v. Herman*, 42 Wn. App. 6, 9, 707 P.2d 1374 (1985); *Duranceau v. Tacoma*, 37 Wn. App. 846, 849, 684 P.2d 1311 (1984). Therefore, the question here is not whether we agree with the trial court's conclusion that the BRLF's action was not frivolous, but whether that conclusion was the product of an exercise of discretion that was manifestly unreasonable or was based on untenable grounds or reasons. *State ex rel. Carroll v. Junker*, 79 Wn.2d 12, 26, 482 P.2d 775 (1971).” *Legal Foundation v. TESC*, 44 Wn. App. 690, 723 P.2d 483 (1986) at p. 696.

In our case, the trial court had to determine whether attorney's fees should be awarded after an offer and acceptance “pursuant to RCW 4.84.250-280”. There is no substantive difference between a trial court's determination of frivolity pursuant to RCW 4.28.185 and a trial court's determination of attorney's fees stemming from an offer and acceptance “pursuant to RCW 4.84.250-280”. Similarly, in the case of *Lay v. Hass*, 112 Wn.App. 818, 51 P.3d 130 (2002) cited by Bates, the Court reviewed two determinations of the trial court. First, whether notice of a request for attorney's fees under RCW 4.84.250 was properly given, and second,

whether the award of attorney's fees was excessive (being 31 times the amount of the underlying claim). The Court stated on page 823:

“We will overturn a trial court's award of attorney's fees only for a manifest abuse of discretion. See Bowles v. Washington Dept. of Ret. Sys., 121 Wn.2d 52, at 71-72, 847 P.2d 440 (1993)”

Again, in our case a similar two part determination was made: (A) whether the offer and acceptance system pursuant to RCW 4.84.250-280 would allow a later request for attorney's fees, and (B) whether Ms. McGuire was a prevailing party under RCW 18.27.040(6). These cases and others that repeat this rule on the standard of review do not say that only the *amount* of the award is reviewed for an *abuse of discretion*, or that a determination of entitlement is reviewed *de novo*. Simply the award and its legal grounds are reviewed for a manifest abuse of discretion. That is the standard here.

2. AN OFFER OF SETTLEMENT FOR “ALL CLAIMS” “PURSUANT TO RCW 4.84.250-280” CANNOT ELIMINATE PLAINTIFF'S RIGHT TO RECOVER ATTORNEY'S FEES PURSUANT TO RCW 18.27.040(6), NOR IS SUCH AN OFFER AND ACCEPTANCE AN UNEQUIVOCAL WAIVER OF THE RIGHT TO ATTORNEY'S FEES:

Bates' “offer” could not have included attorney's fees and costs.

In Appellant's Brief, Bates goes to some effort to show his offer “met the

requirements” under RCW 4.84.250-280. (See Appellant’s Brief at Section IV.A.) Bates essentially refers to the procedure he used. For instance, Bates points out that he attempted to “improve” on the suggested form of the offer from 10A Washington Practice § 68.28, and used the plural “all claims”, rather than “plaintiff’s claim.” Essentially, Bates argues that this “improvement” has transformed the RCW 4.84.250-280 offer into a generic “lump sum” offer, which is inclusive of attorney’s fees and costs. However, conspicuously absent from Bates’ argument both at the trial court level and now in this Court, is any statement whether the “all claims” language also covers the basic costs, such as filing fees. We presume Bates would answer in the affirmative.

The necessary start for analysis here is the statutory language, which controls the determination of the parameters, and therefore the meaning and effect of the offer in this case. First, Bates made clear that his offer was “pursuant to RCW 4.84.250-280...” The meaning of this is clear, and echoed in Black’s Law Dictionary (7th Edition). Black’s defines “pursuant to” as:

1. In compliance with; in accordance with; [she filed the motion pursuant to the Court’s order]
2. As authorized by; under [pursuant to Rule 56, the plaintiff moves for summary judgment]

Now turning to the statutes “pursuant to” which Bates’ offer was made, we see a very clear parameter that is mandatory under that scheme. As we will soon see an offer, for purposes of those statutes, is “exclusive” of fees and costs. Bates is attempting to elevate the significance of “all claims” above the significance of “pursuant to RCW 4.84.250-280”. Comparing “all claims” to “pursuant to RCW 4.84.250-280”, the statutory language leaves no room for ambiguity. The phrase “all claims” on the other hand is subject to interpretation and can mean anything. However, the statute again provides us with a clear definition that “all claims” means only the party’s basic underlying claim, see Mackey v. American Fashion Institute, 60 Wn.App. 426, 804 P.2d 642 (1991), at pages 431-432. Here, like in Mackey, attorney’s fees are not an element of damages and cannot be considered a part of the amount pleaded.

The analysis starts with the use of the phrase “amount pleaded.” This first appears in RCW 4.84.250, setting forth the jurisdictional limit for the size of the case. RCW 4.84.250 states that the determination of the amount cannot include costs:

“...in any action for damages where the amount pleaded...exclusive of costs...”

Dovetailing with that language, both RCW 4.84.260 (when the Plaintiff is deemed the prevailing party) and RCW 4.84.270 (when the Defendant is deemed the prevailing party) identically state that we examine "...the recovery, exclusive of costs..." to determine whether a party has either failed to better the offer (in the case of the Plaintiff, RCW 4.84.260), or failed to reduce the recovery (in the case of the Defendant, RCW 4.84.270). This approach is confirmed by the Court in Mackey at pages 431-432:

Mackey brought suit under RCW 49.52.070, which allows for judgment for twice the amount of wages withheld by way of exemplary damages, *together with* costs and attorney's fees. **Mackey has cited no authority, nor are we aware of any, which characterizes an attorney's fee award under the statute as an element of damages. When a contract, statute or equitable basis authorizes the award, attorney's fees are allowed as a part of the cost of litigation. See Sarruf v. Miller, 90 Wn.2d 880, 885, 586 P.2d 466 (1978). See also Detonics .45 Assocs. v. Bank of Cal., 97 Wn.2d 351, 354, 644 P.2d 1170 (1982) (attorney's fees considered costs of litigation rather than penalties). Attorney's fees are recoverable as a damage element only in a narrow range of circumstances, none of which are present here. See Western Comm'ty Bank v. Helmer, 48 Wn. App. 694, 740 P.2d 359 (1987) (attorney's fees as consequential damages); Bill of Rights Legal Found. v. The Evergreen State College, 44 Wn. App. 690, 723 P.2d 483 (1986) (attorney's fees as compensatory damages in frivolous appeal).**

The "amount pleaded" under RCW 4.84.250 includes only a party's basic claim for damages. See Northside Auto Serv., Inc. v. Consumers United Ins. Co., 25 Wn. App. 486, 492, 607 P.2d 890 (1980) (construing "amount pleaded" under RCW 4.84.250 as basic claim for damages exclusive of interest).

Because the attorney's fees sought by Mackey cannot be characterized as a damage element, they also cannot be considered a part of his "amount pleaded" under the statute.
(Emphasis in original (*italics*) and added (**bold**))

The Court is clear that the amount pleaded, which is then later compared to the "recovery", may not include costs, which by definition includes attorney's fees, costs, and interest. In other words, attorney's fees are not part of the "claim for damages".

It is now apparent that it would be impossible for a RCW 4.84.250-280 offer to include costs and attorney's fees, given that the "amount offered" must be compared to the "...recovery, exclusive of costs..." Justice Tallmadge dealt with a similar issue in *Haley v. Highland*, 142 Wn.2d 135, at 159, 12 P.3d 119 (2002), when examining the test to determine whether a party requesting a *trial de novo* from an arbitration award has "improved his position." The admonition was to always "compare comparables." RCW 4.84.250-280 mandate precisely that, to compare the offer and the outcome, "exclusive of costs."

Since this case is about the attorney's fees award, it is apropos to recall that in Washington attorney's fees, except in special and limited instances are considered part of the costs of litigation, and not an element of damages. See *Detonics .45 Assocs. v. Bank of Cal.*, 97 Wn.2d 351, 354,

644 P.2d 1170 (1982) and the above quote from Mackey. This is not unfair to Bates, since he made the choice to employ the sword of RCW 4.84.270, rather than to simply propose what some cases refer to as a “lump sum” offer outside the parameters of that statute. We presume it was Bates’ intent to set Ms. McGuire up for an award of attorney fees, given that Bates offered \$14 more than Ms. McGuire’s entire claim (\$2,166 vs. \$2180) (CP 46-47). Bates had known the amount of Ms. McGuire’s claim, ever since Bates received Plaintiff’s Second Amended Complaint (CP 83-87). However, the full offer on the underlying claim came only after approximately 17 months of litigation, and after Ms. McGuire had incurred approximately \$2,800 in attorney’s fees. (CP 58-63)

Any offer is always entirely within the control of the offeror, as the 9th Circuit Court of Appeals pointed out in Nusom v. Comh Woodburn, Inc., 122 F.3d 830 (9th Cir. 1997) at page 833: “At the same time, defendants are the master of what their Rule 68 offers offer.” Nusom was a case determining whether attorney’s fees can be recovered after a CR 68 offer is accepted. The Nusom Court went on to say: “If there is any room for doubt about what is included, or excluded, when “costs” are offered, the defendant can craft its offer to make clear the total dollar amount that

it will pay.” Nusom deals with a request for attorney’s fees in the context of a CR 68 (FRCP) offer. For such offers, the offeror of a judgment has only one strict parameter. The offer must be inclusive of “costs then accrued.” The courts have determined that such offers may or may not go further than that, given the plain meaning of the offer of judgment. In other words CR 68 offers of judgment are not subject to the prohibitions we see in RCW 4.84.250-280 offers. See Eagle Point Condo. Owners Assoc. v. Coy, 102 Wn.App. 697, 9 P.3d 898 (2000).

Bates nonetheless argues that Ms. McGuire has waived any possible right to attorney’s fees. This is a high burden for Bates, given that a waiver of a right to attorney’s fees must be clear and unambiguous. Nusom at page 833. Here, Bates failed to mention fees, and now blames Ms. McGuire for that omission, or at best, ambiguity. In the CR 68 context, the Nusom Court pointed out that it is incumbent on the Defendant to state clearly that attorney’s fees are included, if they wish to “avoid exposure.” In this case, although we have seen that RCW 4.84.250-280 offers do not include costs, and consequently do not include attorney’s fees, the same principle applies: If Bates had wished to make a “lump sum” offer, Bates should not have restricted his offer by using the RCW 4.84.250-280 statutory scheme.

CR 68 Offers of Judgment offer helpful analogies and reasoning for this case. Under CR 68, an offer of judgment, which does not specify that fees are included, may allow the plaintiff/accepting party to later request judgment for the underlying offer and for costs and attorney's fees. The following quote from Seaborn Pile Driving Co. v. Glew, 132 Wn.App. 261 (2006) is illustrative. In that case, the Plaintiff "unequivocally accepted" an offer of judgment for \$4,500.00 after four years of litigation, and was later awarded, over strenuous objection, \$38,000.00 in attorney's fees pursuant to the underlying contract:

In defense of its failure to specify that attorney fees were included, Seaborn correctly submits that defendants can make "lump sum" offers and need not provide a "break-down" of what the offer includes.[fn23] However, this does not help Seaborn's case. The Ninth Circuit, following Marek v. Chesny, [fn24] concluded that when an underlying statute does not define attorney fees as part of costs, and the offer does not specify that attorney fees are included, then the offeree may seek attorney fees in a separate motion.[fn25] The court held that "a waiver or limitation on attorney fees must be clear and unambiguous"[fn26] and the defendant's lump sum offer did not constitute such a waiver.

Seaborn at 271.

In this case, there is no "clear and unambiguous" waiver or limitation on attorney fees. It is also respectfully submitted that there is no conceptual difference between one year and four years of litigation.

At least one of the cases cited by Bates is not supportive of his claim in this appeal that the wording "all claims" is automatically inclusive of attorney's fees. In Appellant's Brief at pages 20-21, Bates cites *Roberts v. Bechtel*, 74 Wn.App. 685, 875 P.2d 14, (1994, Div. III) for the proposition that the general wording of a formal release of the Defendant in that case ("any and all claims demands...causes of action...") was the basis for the holding that Bates quotes at page 21 of his brief, a reversal of an attorney's fee award. However, the basis for the reversal was not the release language ("all claims") quoted by Bates, but rather a simultaneously executed stipulation between counsel for the parties which also provided for a dismissal without costs.

"Attorneys for both parties signed a stipulation that
'all causes herein, as between Roberts and Bechtel have
been fully settled and compromised and that this matter
should be dismissed with prejudice and without costs.'"

Roberts at 686.

The Court then stated the Washington rule that "attorney's fees are considered a cost of litigation" (*Roberts* at 687), and felt "bound" by the stipulation precluding an award of costs.

The *Roberts* case illustrates the need for an unequivocal waiver of a right to attorney's fees. The above-quoted stipulation for no award of costs was just the type of waiver contemplated in the law. In this case,

Bates' offer contains no overt references to attorney's fees or costs, and rightfully so given the RCW 4.84.250-280 prohibition of the offer of settlement encompassing costs.

Bates relies heavily on the Colorado case of Bumbal v. Smith, 165 P. 3d 844 (Colo. App. 2007). The Plaintiff in that medical negligence case received an offer of settlement (\$495,000), which Bumbal accepted. The offer was silent on attorney's fees and costs, but had general language, as pointed out by Bates here, "...to settle all claims with Plaintiff Cindy Bumbal for \$495,000.00." The helpful comparison to our case is that the offer to Ms. Bumbal was "pursuant to CRS §13-17-202 et sec [sic]." Crucial to determining any precedential (or persuasive) authority for our case is to compare RCW 4.84.250-280 to the Colorado statute "pursuant to" which that Defendant offered to settle his case. The contrast between the Washington and Colorado statutes is stark. In the Colorado statute, there is no "exclusive of costs" restriction. Additionally, there is no jurisdictional limit (as can be seen from the size of the offer in Bumbal).

Finally, the Colorado statute "pursuant to" which the Defendants made their offer to settle "all claims" had recently been changed, eliminating the important language found in FRCP 68, "with costs then accrued." Because the Colorado legislature removed that reference, the

Colorado Court in *Bumbal* was free to ignore the US Supreme Court's holding in *Marek v. Chesny*, 473 US 1, 105 S.Ct 3012, 87 L.Ed.2d 1 (1985). Instead of following *Marek*, the *Bumbal* Court adopted cases that interpreted general release language as inclusive of attorney's fees and costs. This is no help to Bates, given the stark contrast between the Washington small claims cost and attorney's fee shifting scenario and the general jurisdiction cost shifting scheme "pursuant to" which the Bumbal offer was made and accepted.

3. PLAINTIFF IS THE "PREVAILING PARTY" & THEREFORE IS ENTITLED TO HER COSTS, INTEREST, AND ATTORNEY'S FEES UNDER RCW 18.27.040(6)

It may seem obvious to a casual observer that Ms. McGuire has prevailed simply by obtaining Bates' offer, albeit on the eve (within 2 weeks) of the arbitration hearing (Appellant's Brief at page 11). Nevertheless, our courts have occasionally struggled with the sometimes-varying criteria for qualifying as the "prevailing party." It is important for our analysis to sort out these varying criteria. At the outset of this discussion, we disagree with Bates' position that the two sole criteria are 1) a final judgment, and 2) that such judgment must be "on the merits." (See Appellant's Brief at page 26.) Bates cites no authority in support of

the alleged need for an evidentiary hearing. A more in depth look into this question of “prevailing party” is therefore warranted.

A. PLAINTIFF DID RECEIVE A JUDGMENT AGAINST BATES AND THEREFORE IS THE “PREVAILING PARTY.”

In this case, Bates has failed to pay anything to Ms. McGuire. As a result of such failure to pay, and the disagreement over attorney’s fees and costs, Ms. McGuire was forced to present a judgment, which was entered on August 17, 2007 (nearly 1.5 years after she commenced her case) (CP 7-8). Cases cited by Bates in his opening brief succinctly state the general rule that:

“A prevailing party is generally one who receives a judgment in its favor.” *Schmidt v. Cornerstone Investments*, 115 Wn.2d 148, 164, 795 P.2d 1143 (1990). (Emphasis supplied)

Also please see short discussion in Appellant’s opening brief at page 24. Since Ms. McGuire did obtain a judgment, arguably no further analysis is necessary. However, it is important to examine cases in which attorney’s fees have been awarded on the basis that a party was deemed a “prevailing party,” even when no judgment “on the merits” occurs.

Bates cites *Utility Auto. 2000 v. Choctawhatchee Elec.*, 298 F.3d 1238 (11th Cir. 2002) for the proposition that an acceptance of an offer to

settle “all claims” forecloses a request for attorney fees. However, Choctawhatchee, although denying fees under CR 68, did award fees, pursuant to the contractual provision for fees to the “prevailing party”.

In Choctawhatchee, the Plaintiff accepted a CR 68 judgment offer, and then requested fees. After dismissing the request based on CR 68, the court examined a line of cases, which holds that a party nevertheless “prevails” if the result (CR 68 judgment) is a “...court ordered change [in] the legal relationship between [the plaintiff] and the defendant”. Choctawhatchee, at 1248.

In Choctawhatchee, a partial basis for the holding is that the court must determine whether the court ends up placing their “judicial imprimatur” on the settlement.

More importantly, an accepted offer has the “necessary judicial imprimatur” of the court, Buckhannon at 605, 121 S. Ct. 1835. (emphasis in original), in the crucial sense that is an enforceable judgment against the defendant. Thus, unlike a “defendant’s voluntary chance in conduct” or a purely private settlement resulting in a dismissal, a Rule 68 judgment represents a “judicially sanctioned change in the relationship between the parties.” Choctawhatchee, at 1248.

There is no substantive difference between an enforceable judgment, as in this case that appears will necessitate collection efforts of the same sort, and enforcement of a CR 68 judgment as in Choctawhatchee. The

Choctawhatchee court also mentioned that the CR 68 offer and consequent judgment included a 30-day non-competition provision, which strengthened the position of the court that the plaintiff received the “judicial imprimatur.”

B. A PARTY CAN “PREVAIL” EVEN WITHOUT AN AFFIRMATIVE JUDGMENT BEING ENTERED.

The closest examples we have found in Washington are cases applying the attorney’s fees provisions of the “long-arm” statute (RCW 4.28.185). The lead case on this is Anderson v. Gold Seal Vineyards, 81 Wn.2d 863, 505 P.2d 790 (1973). In Anderson, an out-of-state Defendant was awarded their defense costs and attorney’s fees incurred, after the Cross-Plaintiff voluntarily dismissed their claims against the out-of-state Defendant. The relevant portion of the “long-arm” statute, RCW 4.28.185(5) provides that:

“In the event the defendant is personally served outside the state on causes of action enumerated in this section, and prevails in the action, there may be taxed and allowed to the defendant as part of the costs of defending the action a reasonable amount to be fixed by the court as attorneys’ fees.” (Emphasis supplied)

Therefore, the initial question in Anderson (at page 865) was whether “...there can be no prevailing party unless an affirmative judgment is entered.” The Court’s analysis commenced with a recitation of the

“general” rule that a prevailing party is “...that party in whose favor judgment is entered,” Anderson at page 865. After the Court’s careful description of the evolution of such a rule, the Court simply reflects that:

“We did not state in any of these cases and it is not the law that there can be no prevailing party unless such a judgment is entered.” Anderson at page 867.

The Court then looked at the purpose behind RCW 4.28.185(5), and determined that:

“We think that the general rule pertaining to voluntary nonsuits, that the Defendant is regarded as having prevailed, should be applied to cases in which service upon the Defendant was obtained under RCW 4.28.185(5).” Anderson at page 868.

The Court held that the legislature “must” have had in mind that a Defendant who prevails would have no affirmative judgment entered against them. The holding in Anderson precisely answers the key question in our case: Whether one can be deemed a prevailing party without a judgment at all, let alone a judgment actually entered, albeit pursuant to an offer and acceptance. The all-important language, for this case is the use of the word “prevails” in RCW 4.28.185(5). Identically, the legislature used the word “prevailing” in RCW 18.27.040(6) to allocate attorney’s fees, cost, and interest responsibility. The identity becomes stronger yet when reviewing the legislative history of RCW 18.27.040(6).

C. THE LEGISLATIVE HISTORY OF RCW 18.27.040(6) SUPPORTS THE APPLICATION OF THE ANDERSON V. GOLD SEAL VINEYARD HOLDING TO THIS CASE.

The plain language of RCW 18.27.040(6) appears to be protective of a consumer, giving a statutory right to fees, costs, and interest, where there was none before. The brief legislative history of the 2001 modifications to former RCW 18.27 shows that consumer protection was the motivation behind the 2001 addition of the attorney's fees, cost, and interest section (RCW 18.27.040(6)) among others. The appendix attached hereto contains the following five items:

1. Bill Analysis for HB 1635, prepared by the House Commerce & Labor Committee: "Brief Description: Protecting consumers in contractor transactions"
2. House Bill Report HB 1635, prepared by the House Commerce & Labor Committee: "Title: An act relating to consumer protection regarding contractors" and, "Brief Description: Protecting consumers in contractor transactions."
3. Senate Bill Report SB 5101, reported by the Senate Committee on Labor, Commerce, & Financial Institutions: "Title: An act relating to consumer protection regarding contractors."
4. Final Bill Report SSB 5101, "Synopsis as Enacted": "Brief Description: Protecting consumers in contractor transactions" and "Background: Consumer complaints against building contractors are consistently in the top ten of all complaints received by the Attorney General's Office."

5. Entire text of 5101-S AMH CL AMH-2445.1, with the new 2001 provisions, including the new RCW 18.27.040(6) text on page 7 of 19, as enacted.

RCW 18.27.040(6) was newly enacted in 2001. It arose from the legislature's perception of a dire need for additional protections for customers (consumers) of registered contractors in the State of Washington. Several excerpts from the legislative history are set forth in the Appendix to this brief. Repeatedly, the drafts of the bills are referred to in both the reports and bill analysis, as having their purpose of "Protecting Consumers." (Emphasis supplied.) The most telling entry is found in the Final Bill Report, which found that consumer complaints to the Attorney General are consistently in the "top ten." We submit that the legislature, at least, did not intend for a consumer such as Ms. McGuire, to shoulder all her own costs and attorney's fees, unless clearly, unequivocally, and knowingly waived by her.

In a case out of Whatcom County concerning CR 68 offers the Court approved a "prevailing party" determination based on the Condominium Act, rather than the party's refusal of a CR 68 pre-trial offer of judgment. "...the Association's rejection of Coy's pretrial offer was not a pertinent factor in the determination of the prevailing party, and the trial court correctly disregarded it." Eagle Point Condo. Owners

Assoc. v. Coy, 102 Wn.App. 697, 9 P.3d 898 (2000). The Court, after finding that the trial court had correctly identified the “prevailing party” under the Condominium Act, even though the net recovery at trial was less than an offer under CR 68, went on to distinguish a line of cases raised by that appellant, and commented on the attempted use of an offer of judgment under such a circumstance:

In this case, by contrast, the condominium owners' complaints about the quality of the construction were not resolved by early agreement. They maintained their lawsuit at considerable expense, including not only attorney fees but also the fees paid to their consultant, for over two years before Coy made his \$40,000 offer of judgment. To impose the Richter result in these circumstances would be unjust. The attorney fees incurred in litigating small but meritorious consumer claims often exceed the value of the claim itself. It would be a substantial disincentive to making such claims if the defendant could disable the plaintiff from recovering attorney fees simply by waiting until the eve of trial to offer what the claim is worth. (Eagle Point, supra, at 709)

Recalling that the defendant takes the position that the wording “all claims” should foreclose plaintiff from getting costs and fees in this case, they are really arguing a position that would sabotage RCW 18.27.040(6) award for fees and costs, in the majority of cases that will be brought under that statute. Since the recovery on the bond must include the damages and fees and costs, most “...small but meritorious consumer claims...” under that statute will also fall within the \$10,000.00

jurisdictional limit of RCW 4.84.250-280. The purpose of the bond is to protect the public, and fees and costs are mandatory. The legislature couldn't have intended RCW 4.84.250-280 to eliminate that mandate. The trial court in this case came to this same conclusion also:

“So, based upon my analysis – and further I should state I don't think that 4.84 can trump another statutory provision for the award of fees. I think 4.84 is designed to address those issues where there are small disputes and where there is no other statutory or contractual or equitable right to claim an award of attorney's fees.” (RP p. 15 – 16, ln 24 – ln 5, July 20, 2007)

It may be argued that RCW 18.27.040(6) is distinguished from RCW 4.28.185(5), in that in RCW 4.28.185(5), the fees are only allowed to a Defendant who prevails, not to either party, as in RCW 18.27.040(6). However, other statutes that are heavily adorned with a protective public policy, adopt a general prevailing party standard, rather than for the apparently protected party only. For instance, a tenant who prevails against their landlord for a violation of RCW 59.18.280, which provides remedies for failure to refund the security/damage deposit, receives their attorney's fees and costs. If the landlord prevails, they receive their attorney's fees and costs. This statute provides (in the second paragraph) for an award of costs, including a reasonable attorney's fees to the “prevailing party,” in an “action brought by the tenant to recover the

deposit, ...” There is no law we have found which distinguishes, for the purpose of determining a prevailing party, between statutes which protect one side (RCW 4.28.185(5)) and statutes which, although clearly for the protection of one side (i.e. the tenant under RCW 59.18.280), also provide fairness to the other (landlord). Nor is there any logical distinction between the words “prevails in the action “ (RCW 4.28.185(5)) and “prevailing party in an action” (RCW 18.27.040(6)).

D. A “PREVAILING PARTY” UNDER RCW 4.84.270 IS ONE WHO, ABSENT ANY AFFIRMATIVE JUDGMENT, IS VOLUNTARILY DISMISSED FROM A CASE BY THE PLAINTIFF.

One may expect, taking the “general” rule that a prevailing party is one who is awarded an affirmative judgment, that the Defendant must obtain a judgment of dismissal to acquire their attorney’s fees under RCW 4.84.270 (“...where Plaintiff recovers nothing.”) After all, how can one be considered prevailing with no final judgment to refer to? In Washington, the cases of *Allahyari v. Carter Subaru*, 78 Wn.App. 518, 897 P.2d 413 (1995) and *Walji v. Candyco. Inc.*, 57 Wn.App. 284, 787 P.2d 946 (1990) answer that rhetorical question for us:

In *Hubbard v. Scroggin*, 68 Wn.App. 883, 846 P.2d 580 (1993) (sic) this Court limited the holding in *Anderson* to cases decided under the long-arm statute. As did the Court in *Marassi*, we reject

this narrow interpretation of Anderson, particularly in light of our discussion in Walji:

The reason that an order of voluntary dismissal is not a final judgment is for the protection of Plaintiffs by allowing the litigation to continue under certain circumstances. It is not for the purpose of precluding attorney's fees to a Defendant who has "prevailed" as things stand at that point. Walji v. Candyco, Inc., 57 Wn.App. at 289.

Allahyari at 522-523.

In the same fashion that the above-referenced Defendants are entitled to their status as a prevailing party regardless of any final judgment vindicating their position, we also find that in Washington and elsewhere, Plaintiffs are deemed prevailing parties, and awarded attorney's fees, even though they do not have a trial on the merits of their claims.

E. JUDGMENTS ENTERED PURSUANT TO CR 68, AND OTHER CASES, MAY RESULT IN AN AWARD OF ATTORNEY'S FEES, WHEN NO DETERMINATION OF THE MERITS OF THE CLAIM IS MADE.

A close analogy to the facts of our case is an application of a CR 68 offer and acceptance during pending litigation. The purpose of CR 68 is to encourage settlement. An illustrative case is Nusom v. Comh Woodburn, Inc., 122 F.3d 830 (9th Cir. 1997). In Nusom, the Court stated their task as follows:

“We must decide whether a Plaintiff waives a statutory entitlement to seek attorney’s fees under the Truth in Lending Act (TILA), 15 USC §1640, and Oregon’s Civil Racketeering, Or. Rev. Stat. §166.725(14) (ORICO)—both of which make attorney’s fees an item to be awarded separate from costs—by accepting an offer of judgment under Federal Rules of Civil Procedure 68 for “\$15,000, together with costs accrued to the date of this offer.”

The Court considered the offeror’s position that: “In any event, CIT argues, none of the substantive issues in the case was litigated, so the Nusom’s haven’t proved any wrongdoing, and cannot be “successful” for the purposes of their TILA claims or “prevailing parties” for purposes of ORICO.” The Court followed the ruling in *Marek v. Chesny*, 473 US 1, 9 (1985), and applying the principles therein, rejected CIT’s argument that “successful” and “prevailing party” were not established. “We conclude that, in this case, the judgment does not foreclose the Nusom’s from seeking attorney’s fees because it does not clearly and unambiguously waive or limit them.” *Nusom* at 33.

4. RESPONDENT REQUESTS ATTORNEY’S FEES UNDER RAP 18.1.

Respondent respectfully requests an award of reasonable attorney’s fees under RAP 18.1, if she prevails on appeal. This request is based on the award below, and the law that a prevailing party on appeal who was entitled to an award of attorney’s fees at the trial level, and subsequently

prevails on appeal, is similarly entitled to attorney's fees on appeal. See Martin v. Johnson, 141 Wn. App. 611, 170 P.3d 1198 (2007) at page 623-624:

RAP 18.1(a) permits us to award attorney fees and costs on appeal if applicable law grants a party the right to recover attorney fees or expenses. In general, a prevailing party who is entitled to attorney fees below is entitled to attorney fees if it prevails on appeal. Sharbono v. Universal Underwriters Ins. Co., 139 Wn. App. 383, at 423, 161 P.3d 406 (2007) (citing Richter v. Trimberger, 50 Wn. App. 780, 786, 750 P.2d 1279 (1988)).

IV. CONCLUSION.

This Court is first asked to analyze, whether or not, Bates' offer to settle "all claims" "pursuant to RCW 4.84.250-280" was inclusive of costs, interest, and attorney's fees. The statute again provides us with a clear definition that "all claims" means only the party's basic underlying claim, see Mackey at pages 431-432. Mackey also held that attorney's fees are not an element of damages and cannot be considered a part of the amount pleaded. Therefore, Bates' offer of settlement could not have included costs, attorney's fees, and interest and there is no need to consult or analyze cases from other jurisdictions to find the meaning for "all claims".

This Court was next asked to analyze, whether or not, Ms. McGuire was a "prevailing party" under RCW 18.27.040(6). Ms. McGuire recovered her entire damages claim from Bates (albeit in the form of a judgment). Ms. McGuire had judgment entered in her favor against Bates and therefore was the "prevailing party."

Respondent respectfully requests that this court affirm the trial court's decision to enter judgment in favor of Ms. McGuire and awarding attorney's fees, interest, and costs to Ms. McGuire.

RESPECTFULLY SUBMITTED this 2nd day of June 2008.

PEMBERTON & HOOGESTRAAT, P.S.

By: 

Joseph T. Pemberton, WSBA #12467
Attorney for Respondent.

V. APPENDIX.

RCW 18.27.040(6)

(6) The prevailing party in an action filed under this section against the contractor and contractor's bond or deposit, for breach of contract by a party to a construction contract, is entitled to costs, interest, and reasonable attorneys' fees. The surety upon the bond is not liable in an aggregate amount in excess of the amount named in the bond nor for any monetary penalty assessed pursuant to this chapter for an infraction.

RCW 4.84.250 ATTORNEYS' FEES AS COSTS IN DAMAGE
ACTIONS OF TEN THOUSAND DOLLARS OR LESS —
ALLOWED TO PREVAILING PARTY.

Notwithstanding any other provisions of chapter 4.84 RCW and RCW 12.20.060, in any action for damages where the amount pleaded by the prevailing party as hereinafter defined, exclusive of costs, is seven thousand five hundred dollars or less, there shall be taxed and allowed to the prevailing party as a part of the costs of the action a reasonable amount to be fixed by the court as attorneys' fees. After July 1, 1985, the maximum amount of the pleading under this section shall be ten thousand dollars.

**RCW 4.84.260 ATTORNEYS' FEES AS COSTS IN DAMAGE
ACTIONS OF TEN THOUSAND DOLLARS OR LESS — WHEN
PLAINTIFF DEEMED PREVAILING PARTY.**

The plaintiff, or party seeking relief, shall be deemed the prevailing party within the meaning of RCW 4.84.250 when the recovery, exclusive of costs, is as much as or more than the amount offered in settlement by the plaintiff, or party seeking relief, as set forth in RCW 4.84.280.

**RCW 4.84.270 ATTORNEYS' FEES AS COSTS IN DAMAGE
ACTIONS OF TEN THOUSAND DOLLARS OR LESS — WHEN
DEFENDANT DEEMED PREVAILING PARTY.**

The defendant, or party resisting relief, shall be deemed the prevailing party within the meaning of RCW 4.84.250, if the plaintiff, or party seeking relief in an action for damages where the amount pleaded, exclusive of costs, is equal to or less than the maximum allowed under RCW 4.84.250, recovers nothing, or if the recovery, exclusive of costs, is the same or less than the amount offered in settlement by the defendant, or the party resisting relief, as set forth in RCW 4.84.280.

**RCW 4.84.280 ATTORNEYS' FEES AS COSTS IN DAMAGE
ACTIONS OF TEN THOUSAND DOLLARS OR LESS — OFFERS
OF SETTLEMENT IN DETERMINING.**

Offers of settlement shall be served on the adverse party in the manner prescribed by applicable court rules at least ten days prior to trial. Offers of settlement shall not be served until thirty days after the completion of the service and filing of the summons and complaint. Offers of settlement shall not be filed or communicated to the trier of the fact until after judgment, at which time a copy of said offer of settlement shall be filed for the purposes of determining attorneys' fees as set forth in RCW 4.84.250.

**COLORADO REVISED STATUTES 13-17-202. AWARD OF
ACTUAL COSTS AND FEES WHEN OFFER OF SETTLEMENT
WAS MADE.**

(1)(a) Notwithstanding any other statute to the contrary, in any civil action of any nature commenced or appealed in any court of record in this state:

(I) If the plaintiff serves an offer of settlement in writing at any time more than fourteen days before the commencement of the trial that is rejected by the defendant, and the plaintiff recovers a final judgment in excess of the amount offered, then the plaintiff shall be awarded actual costs accruing after the offer of settlement to be paid by the defendant.

(II) If the defendant serves an offer of settlement in writing at any time more than fourteen days before the commencement of the trial that is rejected by the plaintiff, and the plaintiff does not recover a final judgment in excess of the amount offered, then the defendant shall be awarded actual costs accruing after the offer of settlement to be paid by the plaintiff.

(III) If an offer of settlement is not accepted in writing within fourteen days after service of the offer, the offer shall be deemed rejected, and the party who made the offer is not precluded from making a subsequent offer. Evidence thereof is not admissible except in a proceeding to determine costs.

(IV) If an offer of settlement is accepted in writing within fourteen days after service of the offer, the offer of settlement shall constitute a binding settlement agreement, fully enforceable by the court in which the civil action is pending.

(V) An offer of settlement under this section shall remain open for at least fourteen days from the date of service unless withdrawn by service of withdrawal of the offer of settlement.

(VI) An offer of settlement served at any time fourteen days or less before the commencement of the trial shall not be subject to this section, and evidence thereof is not admissible for any purpose.

(b) For purposes of this section, "actual costs" shall not include attorney fees but shall mean costs actually paid or owed by the party, or his or her attorneys or agents, in connection with the case, including but not limited to filing fees, subpoena fees, reasonable expert witness fees, copying costs, court reporter fees, reasonable investigative expenses and fees, reasonable travel expenses, exhibit or visual aid preparation or presentation expenses, legal research expenses, and all other similar fees and expenses.

(2) When comparing the amount of any offer of settlement to the amount of a final judgment actually awarded, any amount of the final judgment representing interest subsequent to the date of the offer in settlement shall not be considered.

(3) When the liability of one party to another has been determined by verdict or order or judgment, but the amount or extent of the liability remains to be determined by further proceedings, the party adjudged liable may make an offer of settlement, which shall have the same effect as an offer made before trial (except with respect to costs already incurred) if it is served pursuant to subsection (1) of this section.

Source: L. 90: Entire section added, p. 852, § 14, effective May 31. L. 95: Entire section amended, p. 1194, § 1, effective July 1. L. 2003: (1) amended, p. 1359, § 1, effective July 1.

Cross references: For the legislative declaration contained in the 1990 act enacting this section, see section 1 of chapter 100, Session Laws of Colorado 1990.

Washington State
House of Representatives
Office of Program Research

**BILL
ANALYSIS**

**Commerce & Labor
Committee**

HB 1635

Brief Description: Protecting consumers in contractor transactions.
Sponsors: Representatives Ogden and Conway.

Brief Summary of Bill

- Increases the amounts of the bonds and the insurance required of general and specialty contractors, and limits recovery against the bonds by claimants other than residential homeowners.
- Provides that liens filed by subcontractors or suppliers in connection with new residential construction for a residential homeowner may only be satisfied from amounts not yet paid to the prime contractor.
- Requires the Department of Labor and Industries to deny and suspend registration of contractors with an unsatisfied final judgment.
- Directs the department to establish an advisory committee and education and testing requirements for contractors.

Hearing Date: 2/13/01

Staff: Jill Reinmuth (786-7134).

Background:

The Contractors Registration Act, Chapter 18.27 RCW, requires general and specialty contractors to register with the Department of Labor and Industries. They also must meet certain requirements relating to registration, bonding and insurance, and notice to customers. In addition to registering contractors, the department administers and enforces other provisions of the Act.

Registration: The department must deny an application for registration if the applicant has previously registered and has an unsatisfied final judgment under the previous registration. A registration is valid for one year. The department may not charge a registration fee of more than \$50.

Bonds: An applicant for registration or renewal must submit a bond. The amount of the bond must be \$6,000 for general contractors, and \$4,000 for specialty contractors. An action to recover against the bond must be filed in superior court within one year of the expiration of the current registration. Failure to maintain the bond is cause to suspend or deny a contractor's registration.

Insurance: An applicant also must obtain insurance or provide the department with an assigned account. The amount of insurance coverage or the assigned account must be \$20,000 for property damage, \$50,000 for injury or death to one person, and \$100,000 for injury or death to more than one person. Failure to maintain the insurance or the account is also cause to suspend or deny a contractor's registration.

Liens: A contractor bidding on or performing construction work that has a contract price of \$1,000 or more must provide the customer with a disclosure statement that includes the contractor's registration number. The disclosure statement must also set forth the amount of the contractor's bond and an explanation of steps that the customer might take to procure additional

protection if a claim arises from the work done under the contract. Persons who do not contract directly with the owner must give the owner notice of right to claim a lien. Subcontractors and suppliers who are not paid may file a lien against the property even if the prime contractor has been paid in full. Advertising: A contractor may not advertise that he or she is bonded and insured. The civil penalty for prohibited advertising may not exceed \$5,000. Summary of Bill:

The Contractors Registration Act is modified. Requirements relating to registration, bonding and insurance, notice to customers, and advertising are changed. In addition, an advisory committee and education and testing requirements must be established.

Registration: The Department of Labor and Industries must deny an application for registration if the applicant was a principal or an officer of a previous registrant with an unsatisfied final judgment or owes the department penalties or fees. The department must suspend an active registration if the registrant has an unsatisfied final judgment against him or her, or is a principal or an officer of another registrant with an unsatisfied final judgment. A registration is valid for two years, instead of one year. The \$50 limitation on contractor registration fees is repealed.

Bonds: The amount of the bond is increased from \$6,000 to \$15,000 for a general contractor, and from \$4,000 to \$8,000 for a specialty contractor. In specified circumstances, the director may increase the amount of the bond to up to \$75,000 for a general contractor and \$40,000 for a specialty contractor. Amounts paid to claimants other than residential homeowners must not exceed \$7,500 from a general contractor bond and \$4,000 from a specialty contractor bond. A residential homeowner may bring an action against the bond for breach of contract within two years of the date the certificate of registration expires. If a final judgment impairs the full amount of the bond, the contractor's registration is automatically suspended.

Insurance: The amount of insurance coverage or the assigned account is increased from \$20,000 to \$50,000 for property damage, from \$50,000 to \$100,000 for injury or death to one person, and from \$100,000 to \$200,000 for injury or death to more than one person. If the insurance policy expires, or is cancelled, revoked, or withdrawn, the contractor's registration is automatically suspended.

Liens: In addition to registration and bonding information, the disclosure statement that a contractor must give to a customer must say that: (1) the bond might not be sufficient to pay a customer's claim; (2) for greater protection, the customer may request a payment and performance bond; (3) for additional protection, the customer should make checks payable jointly to the contractor and the supplier or subcontractor and require a lien release; (4) other methods of protection include hiring attorneys or construction professionals; and (5) the customer's property can be liened.

Subcontractors and suppliers who do not contract directly with the owner must give the owner notice of right to claim a lien in connection with new residential construction. Such liens may only be satisfied from the amounts not yet paid to the prime contractor.

Advertising: The prohibition on advertising that a contractor is bonded and insured is repealed. The maximum penalty for other prohibited advertising is increased from \$5,000 to \$10,000.

Advisory Committee: The director of the department must establish a construction contractor advisory committee to advise the department on matters relating to contractor registration. The director or his or her designee serves as the chair of the committee.

Education and Testing: The department must establish rules requiring applicants to complete up to 16 hours of education related to business practices and laws affecting contractors and pass competency tests. After July 1, 2002, passing a

test is required prior to registration. Exemptions from the education and testing requirements are available to certain contractors previously registered in the state or elsewhere.

Other: The contractor registration act is made inapplicable to a mobile/manufactured home dealer or manufacturer who subcontracts with a registered contractor to set up a home. A process is established for the department to collect payments, penalties or fines due from contractors. Definitions of several terms, including "residential homeowner," are added.

Rules Authority: The bill contains provisions requiring the exercise of rule-making powers by the Department of Labor and Industries.

Appropriation: None.

Fiscal Note: Requested on February 7, 2001.

Effective Date: Ninety days after adjournment of session in which bill is passed.

HOUSE BILL REPORT

HB 1635

As Reported by House Committee On:
Commerce & Labor

Title: An act relating to consumer protection regarding contractors.

Brief Description: Protecting consumers in contractor transactions.

Sponsors: Representatives Ogden and Conway.

Brief History:

Committee Activity:

Commerce & Labor: 2/13/01, 2/27/01 [DPS].

Brief Summary of Substitute Bill

- Increases the amounts of the bonds and the insurance required of general and specialty contractors, and limits recovery against the bonds by claimants other than residential homeowners.
- Provides that liens filed by subcontractors or suppliers in connection with new residential construction for a residential homeowner may only be satisfied from amounts not yet paid to the prime contractor.
- Requires the Department of Labor and Industries to deny and suspend registration of contractors with an unsatisfied final judgment.
- Directs the department to establish an unregistered contractor enforcement team.

HOUSE COMMITTEE ON COMMERCE & LABOR

Majority Report: The substitute bill be substituted therefor and the substitute bill do pass. Signed by 5 members: Representatives Clements, Republican Co-Chair; Conway, Democratic Co-Chair; Wood, Democratic Vice Chair; Hunt and Kenney.

Minority Report: Do not pass. Signed by 3 members: Representatives B. Chandler, Republican Vice Chair; Lisk and McMorris.

Staff: Jill Reinmuth (786-7134).

Background:

The Contractors Registration Act, Chapter 18.27 RCW, requires general and specialty contractors to register with the Department of Labor and Industries. They also must meet certain requirements relating to registration, bonding and insurance, and notice to customers. In addition to registering contractors, the department administers and enforces other provisions of the Act.

Registration: The department must deny an application for registration if the applicant has previously registered and has an unsatisfied final judgment under the previous registration. A registration is valid for one year. The department may not charge a registration fee of more than \$50.

Bonds: An applicant for registration or renewal must submit a bond. The amount of the bond must be \$6,000 for general contractors, and \$4,000 for specialty contractors. An action to recover against the bond must be filed in superior court within one year of the expiration of the current registration. Failure to maintain the bond is cause to suspend or deny a contractor's registration.

Insurance: An applicant also must obtain insurance or provide the department with an assigned account. The amount of insurance coverage or the assigned account must be \$20,000 for property damage, \$50,000 for injury or death to one person, and \$100,000 for injury or death to more than one person. Failure to maintain the insurance or the account is also cause to suspend or deny a contractor's registration.

Liens: A contractor bidding on or performing construction work that has a

contract price of \$1,000 or more must provide the customer with a disclosure statement that includes the contractor's registration number. The disclosure statement must also set forth the amount of the contractor's **bond** and an explanation of steps that the customer might take to procure additional protection if a claim arises from the work done under the contract. Subcontractors and suppliers who do not contract directly with the owner must give the owner notice of right to claim a lien. Subcontractors and suppliers who are not paid may file a lien against the property even if the prime **contractor** has been paid in full.

Advertising: A **contractor** may not advertise that he or she is bonded and insured. The civil penalty for prohibited advertising may not exceed \$5,000.

Summary of Substitute Bill:

The Contractors Registration Act is modified. Requirements relating to registration, bonding and insurance, liens and advertising are changed. Requirements related to increased consumer and **contractor** awareness are added. An unregistered contractors enforcement team is established. A dedicated account is created.

Registration: The Department of Labor and Industries must deny an application for registration if the applicant was a principal or an officer of a previous registrant with an unsatisfied final judgment or owes the department penalties or fees. The department must suspend an active registration if the registrant has an unsatisfied final judgment against him or her, or is a principal or an officer of another registrant with an unsatisfied final judgment. A registration is valid for two years, instead of one year. The \$50 limitation on **contractor** registration fees is increased to \$100 for a two-year certificate of registration.

Bonds: The amount of the **bond** is increased from \$6,000 to \$12,000 for a general **contractor**, and from \$4,000 to \$6,000 for a specialty **contractor**. In specified circumstances, the director may increase the amount of the **bond** to up to \$36,000 for a general **contractor** and \$18,000 for a specialty **contractor**. Amounts paid to claimants other than residential homeowners must not exceed \$6,000 from a general **contractor bond** and \$4,000 from a specialty **contractor bond**. A residential homeowner may bring an action against the **bond** for breach of contract within one year of the date work is completed or abandoned. If a final judgment impairs the full amount of the **bond**, the contractor's registration is automatically suspended.

Insurance: The amount of insurance coverage or the assigned account is increased from \$20,000 to \$50,000 for property damage, from \$50,000 to \$100,000 for injury or death to one person, and from \$100,000 to \$200,000 for injury or death to more than one person. If the insurance policy expires, or is cancelled, revoked, or withdrawn, the contractor's registration is automatically suspended.

Liens: In addition to registration and bonding information, the disclosure statement that a **contractor** must give to a customer must say that: (1) the **bond** might not be sufficient to pay a customer's claim; (2) the customer's property can be liened; (3) for greater protection, the customer may retain a portion of the contract; and (4) for additional protection, the customer may request original lien release documents.

Subcontractors and suppliers who do not contract directly with the owner must give the owner notice of right to claim a lien in connection with new residential construction. Such liens may only be satisfied from the amounts not yet paid to the prime **contractor**.

Advertising: The maximum penalty for other prohibited advertising is increased from \$5,000 to \$10,000.

Consumer and Contractor Awareness: The department must increase consumer awareness of legal requirements protection available to consumers; increase

contractor awareness of legal obligations; use reasonable means to increase awareness; develop model construction contracts; and air public service announcements regarding consumer and **contractor** education services.

Unregistered Contractors: The department, along with the Employment Security Department and the Department of Revenue, must establish an unregistered contractors enforcement team. The team must develop a written plan to coordinate enforcement activities, and develop annual reports to the Legislature on enforcement activities. The director of the Department of Labor and Industries must allocate a minimum of .05 of an FTE to implement the plan.

Other: The **contractor** registration act is made inapplicable to a mobile/manufactured home dealer or manufacturer who subcontracts with a registered **contractor** to set up a home. A process is established for the department to collect payments, penalties or fines due from unregistered contractors. Definitions of several terms, including "residential homeowner" and "unsatisfied final judgment" are added.

Substitute Bill Compared to Original Bill:

Provisions relating to registration, bonding and insurance, liens, and advertising are changed. Provisions relating to increased consumer and **contractor** awareness, an unregistered contractors enforcement team, and a dedicated account are added. Provisions relating to an advisory committee and education and testing requirements are deleted.

Registration: A new provision prohibits the Department of Labor and Industries from denying an application or suspend a registration because of an unsatisfied final judgment if a court finds that the unsatisfied final judgment is the result of the fraud or negligence of another party.

The limitation on the amount of **contractor** registration fees is restored. The amount of the fee is increased from \$50 for a one-year certificate of registration to \$100 for a two-year certificate of registration. The department is required to revise the amount once every two years to reflect the fiscal growth factor.

Bonds: The proposed amounts of the bonds are decreased from \$15,000 to \$12,000 for a general **contractor** and from \$8,000 to \$6,000 for a specialty **contractor**. The proposed amounts of the bonds reserved for claimants other than residential homeowners are changed to \$6,000 from the general **contractor bond** and \$4,000 from the specialty **contractor bond**.

The specific circumstances in which the director may increase the amount of the **bond** are modified. The multiplier by which the amount of the **bond** is decreased from five times the normal amount to three times the normal amount.

The statute of limitations for residential homeowners to bring actions against bonds is decreased to from two years to one year from the date that contract work was completed or abandoned. The prevailing parties in actions against bonds are permitted to recover attorneys' fees and costs.

Liens: The content of the disclosure statement is modified to include language regarding retaining a portion of the contract; and requesting original lien release documents, and to exclude language regarding payment and performance bonds; attorneys and construction experts; and making checks payable jointly. A provision is added to prohibit subcontractor and supplier liens from being satisfied if the residential homeowner has paid the **contractor**, prior to receipt of the lien notice, for the specific services or supplies for which the lien is claimed.

Advertising: The prohibition on advertising that a **contractor** is bonded and insured is not repealed.

Consumer and Contractor Education: A provision is added requiring the department to increase consumer and **contractor** awareness of legal protection and obligations.

Unregistered Contractors: A provision is added to require the department to

create an enforcement team, and to require the team develop a written plan to coordinate enforcement activities.

Dedicated Account: Provisions are added to create the **contractor** registration account.

Other: The new collection process is made applicable only to unregistered contractors.

A definition of "unsatisfied final judgment" is added.

Advisory Committee: A provision establishing an advisory committee is deleted.

Continuing Education and Competency Testing: Provisions requiring continuing education and competency testing are deleted.

Appropriation: None.

Fiscal Note: Requested on February 7, 2001.

Effective Date of Substitute Bill: Ninety days after adjournment of session in which bill is passed.

Testimony For: For many people, their biggest investment is their home. This homeowner protection bill is necessary because of the problems that homeowners have with registered and unregistered contractors. Although there are many good contractors in Washington, there are others who do poor quality work or leave work unfinished.

The **bond** amounts need to be increased. The current **bond** amounts sometimes do not cover even the legal fees. Homeowners need assurance of access to a portion of the **bond** amount. They also need to be better educated as to their resources and their responsibilities. Contractors need competency testing for business knowledge. Continuing education would help contractors stay current in their field.

Testimony Against: The bill should focus on the problem of unregistered contractors, especially those who do not pay taxes. Some changes to **bond** amounts and lien rights may be appropriate. Requirements for prompt payment of subcontractors and suppliers are needed, but changes in lien rights are not acceptable. An advisory board and continuing education requirements would give homeowners a false sense of security. The bill does not provide for better consumer education. The definition of **contractor** appears to exclude "spec" builders from registration requirements. The prohibition on advertising about bonding and insurance should not be repealed.

Testified: (In support, original bill) Representative Ogden, prime sponsor; Julia Barrett, residential homeowner; Patrick Underhill, International Carpenters Union; Gregg Morck, International Carpenters Union; Dan Sexton, Washington State Association of Plumbers and Steamfitters; Patrick Woods, Department of Labor and Industries; and Sally Gustafson, Office of the Attorney General.

(Opposed, original bill) Brian Minnich, Building Industry Association of Washington; Larry Stevens, Contractors Bonding and Insurance Company and the National Electrical Contractors Association; Janis Lucas, National Association of Credit Management; Rick Slunaker, Associated General Contractors of Washington; Bob Gee, Western Building Materials Association; and Gary Smith, Independent Business Association.

SENATE BILL REPORT

SB 5101

As Reported By Senate Committee On:

Labor, Commerce & Financial Institutions, February 22, 2001

Title: An act relating to consumer protection regarding contractors.

Brief Description: Protecting consumers in **contractor** transactions.

Sponsors: Senators Prentice, Winsley, Kohl-Welles, Fairley and Fraser; by request of Department of Labor & Industries.

Brief History:

Committee Activity: Labor, Commerce & Financial Institutions: 1/15/01, 2/22/01 [DPS, DNP].

SENATE COMMITTEE ON LABOR, COMMERCE & FINANCIAL INSTITUTIONS

Majority Report: That Substitute Senate Bill No. 5101 be substituted therefor, and the substitute bill do pass.

Signed by Senators Prentice, Chair; Gardner, Vice Chair; Fairley, Patterson, Rasmussen, Regala, West and Winsley.

Minority Report: Do not pass.

Signed by Senator Hochstatter.

Staff: Jack Brummel (786-7428)

Background: Consumer complaints against building contractors are consistently in the top ten of all complaints received by the Attorney General's Office.

General contractors must file a \$6,000 surety **bond** and specialty contractors must file a \$4,000 surety **bond** with the Department of Labor and Industries when applying for registration. An action to recover against the **bond** must be filed in superior court within one year of the expiration of the current certification. The amount of insurance required of a **contractor** is \$20,000 for property damage, \$50,000 for injury or death to one person, and \$100,000 for injury or death to more than one person.

Registration certificates are issued for one year. The department denies an application for registration if the applicant has previously registered and has an unsatisfied final judgment under the previous registration. A **contractor** must give notice to a customer at the start of a construction project about the availability of the **bond**.

The maximum penalty for violation of statutory registration, advertising, identification and solicitation requirements is \$5,000.

Current law does not require that a registered **contractor** demonstrate professional business competency.

The department is prohibited from charging a **contractor's** registration fee of more than \$50.

Contractors, subcontractors, or suppliers may file a lien against property if they have not been paid, even if the prime **contractor** has been paid in full.

Notice on the right to claim a lien must be given in certain circumstances.

Summary of Substitute Bill: The Department of Labor and Industries (L & I) must deny a contractor's application for registration and suspend an active registration if the applicant or registrant was a major participant in a contracting company with an unsatisfied final judgment, or has failed to maintain a valid unified business identifier if required by the Department of Revenue.

The amount of the surety **bond** required is increased to \$12,000 for general contractors and \$6,000 for specialty contractors. Fifty percent of the **bond** amount is to be reserved for claims by residential homeowners. The amount of the surety **bond** required may be increased if the director determines there is a history of unpaid judgments against, or too many actions filed against, a **contractor**. Residential homeowners have up to two years to file against the **bond** after the work was completed or abandoned.

The amount of insurance required of a **contractor** is increased to \$50,000 for property damage; to \$100,000 for personal injury or death of one person; and to \$200,000 for personal injury or death of more than one person.

Registration certificates are issued for two years. Impairment of a **bond** or termination of an insurance policy automatically suspends a **contractor's** registration.

The department is authorized to establish a process to collect payments, penalties, or fines due from contractors.

The state's contract registration requirements do not apply to mobile or manufactured home purveyors if they use registered contractors to set up or repair homes.

The maximum penalty for false advertising is increased to \$10,000.

The notice that a **contractor** must give to a customer about the contractor's **bond** is to include statements that: (1) the **bond** might not be sufficient to pay a customer's claim; (2) retaining funds can provide greater protection; (3) the customer's property can be liened; and (4) the customer should get lien releases.

Owners of new single family residences are to receive notice of right to claim a lien from all who do not contract directly with the owner. The lien right applies to services, material, and equipment supplied after the notice is given. Such liens may only be satisfied from the amounts not yet paid to the prime **contractor**. The notice is to include a bold statement that it is intended to provide information necessary to manage the owner's construction project.

An unregistered contractors enforcement team is established with staff from the Department of Revenue, L&I, and Employment Security. The department is to increase consumer and **contractor** awareness through workshops, the internet hot lines, model contracts, and public service announcements. A **contractor** registration account is established with registration fees, penalties, and other sources. Expenditures from the account must be used for administration, enforcement and education functions.

The \$50 limitation on **contractor** registration fees is changed to \$100 (the registration period is now two years instead of one) and will be changed consistent with the fiscal growth factor.

Substitute Bill Compared to Original Bill: The **bond** amount in the substitute is \$12,000 and \$6,000 rather than the \$15,000 and \$8,000 of the original. The substitute removes provisions for a **contractor** advisory committee, as well as training and testing requirements. The substitute adds a provision that lien rights apply to services, materials, and equipment supplied after the lien notice is given. The substitute establishes an unregistered contractors enforcement team, a **contractor** registration account, and new consumer and **contractor** awareness functions for the department. Notice to customer requirements in the original bill were narrowed in the substitute.

Appropriation: None.

Fiscal Note: Requested on January 11, 2001.

Effective Date: Ninety days after adjournment of session in which bill is passed.

Testimony For: The current system is inadequate to protect the consumer. The **bond** has not been increased since 1983. The fine amount needs increasing, too. The bill addresses industry-wide problems and will benefit everyone while treating contractors fairly.

Testimony Against: The bill doesn't go far enough; it needs to do more to get those that are dishonest. Unregistered contractors are the problem. The increased **bond** will put a burden on small contractors. Splitting the **bond** is a bad idea; consumers could become a target. The education and testing requirements will give homeowners a false sense of security. The bill doesn't

require consumer education.

Testified: PRO: Patrick Woods; Sally Gustafson, Attorney General's Office; Dan Sexton, Washington State Association of Plumbers; Maury Hood; Tom Sullivan; Christopher Young; CON: Bob Gee, Western Building Material Association; Kerry Lawrence; Janice Lucas, NACM; Jeff Hansel, BIAW; Rick Slunaker, AGC; Gary Smith, IBA.

FINAL BILL REPORT

SSB 5101

C 159 L 01

Synopsis as Enacted

Brief Description: Protecting consumers in **contractor** transactions.

Sponsors: Senate Committee on Labor, Commerce & Financial Institutions (originally sponsored by Senators Prentice, Winsley, Kohl-Welles, Fairley and Fraser; by request of Department of Labor & Industries).

Senate Committee on Labor, Commerce & Financial Institutions

House Committee on Commerce & Labor

House Committee on Appropriations

Background: Consumer complaints against building contractors are consistently in the top ten of all complaints received by the Attorney General's Office.

General contractors must file a \$6,000 surety **bond** and specialty contractors must file a \$4,000 surety **bond** with the Department of Labor and Industries when applying for registration. An action to recover against the **bond** must be filed in superior court within one year of the expiration of the current certification. The amount of insurance required of a **contractor** is \$20,000 for property damage, \$50,000 for injury or death to one person, and \$100,000 for injury or death to more than one person.

Registration certificates are issued for one year. The department denies an application for registration if the applicant has previously registered and has an unsatisfied final judgment under the previous registration. A **contractor** must give notice to a customer at the start of a construction project about the availability of the **bond**.

The maximum penalty for violation of statutory registration, advertising, identification and solicitation requirements is \$5,000.

Current law does not require that a registered **contractor** demonstrate professional business competency.

The department is prohibited from charging a contractor's registration fee of more than \$50.

Contractors, subcontractors, or suppliers may file a lien against property if they have not been paid, even if the prime **contractor** has been paid in full.

Notice on the right to claim a lien must be given in certain circumstances.

Summary: The Department of Labor and Industries (L&I) must deny a contractor's application for registration and suspend an active registration if the applicant or registrant was a major participant in a contracting company with an unsatisfied final judgment, or has failed to maintain a valid unified business identifier if required by the Department of Revenue.

The amount of the surety **bond** required is increased to \$12,000 for general contractors and \$6,000 for specialty contractors. One-half of the **bond** amount for general contractors and one-third of the **bond** amount for specialty contractors must be reserved for claims by residential homeowners. The amount of the surety **bond** required may be increased if the director determines there have been six final judgments in the past five years against a **contractor** involving at least two residential single-family dwellings. Residential homeowners have up to two years to file against the **bond** after the work was completed or abandoned.

The amount of insurance required of a **contractor** is increased to \$50,000 for property damage; to \$100,000 for personal injury or death of one person; and to \$200,000 for personal injury or death of more than one person.

Registration certificates are issued for two years. Impairment of a **bond** or termination of an insurance policy automatically suspends a contractor's registration.

The department is authorized to establish a process to collect payments,

penalties, or fines due from contractors.

The state's contract registration requirements do not apply to mobile or manufactured home purveyors if they use registered contractors to set up or repair homes.

The maximum penalty for false advertising is increased to \$10,000.

The notice that a **contractor** must give to a customer about the contractor's **bond** is to include statements that: (1) the **bond** might not be sufficient to pay a customer's claim; (2) retaining funds can provide greater protection; (3) the customer's property can be lienied; and (4) the customer should get lien releases.

An unregistered contractors enforcement team is established with staff from the Department of Revenue, L&I, and Employment Security. The department is to increase consumer and **contractor** awareness.

The \$50 limitation on **contractor** registration fees is changed to a \$100 fee for the 2001-2003 biennium and is changed in the future consistent with the fiscal growth factor.

Votes on Final Passage:

Senate 490

House 95 0 (House amended)

Senate 47 0 (Senate concurred)

Effective: July 22, 2001

BILL REQUEST - CODE REVISER'S OFFICE

BILL REQ. #: AMH-2445.1/01
ATTY/TYPIST: KB:ads
BRIEF DESCRIPTION:

5101-S AMH CL AMH-2445.1

SSB 5101 - H COMM AMD

By Committee on Commerce & Labor

ADOPTED AS AMENDED 04/10/01

Strike everything after the enacting clause and insert the following:

"Sec. 1. RCW 18.27.010 and 1997 c 314 s 2 are each amended to read as follows:

Unless the context clearly requires otherwise, the definitions in this section apply throughout this chapter.

(1) "**Contractor**" means any person, firm, or corporation who or which, in the pursuit of an independent business undertakes to, or offers to undertake, or submits a bid to, construct, alter, repair, add to, subtract from, improve, move, wreck or demolish, for another, any building, highway, road, railroad, excavation or other structure, project, development, or improvement attached to real estate or to do any part thereof including the installation of carpeting or other floor covering, the erection of scaffolding or other structures or works in connection therewith or who installs or repairs roofing or siding; or, who, to do similar work upon his or her own property, employs members of more than one trade upon a single job or project or under a single building permit except as otherwise provided herein. "**Contractor**" includes any person, firm, ((or)) corporation, or other entity covered by this subsection, whether or not registered as required under this chapter.

(2) "Department" means the department of labor and industries.

(3) "Director" means the director of the department of labor and industries or designated representative employed by the department.

(4) "General contractor" means a **contractor** whose business operations require the use of more than two unrelated building trades or crafts whose work the **contractor** shall superintend or do in whole or in part. "General contractor" shall not include an individual who does all work personally without employees or other "specialty contractors" as defined in this section. The terms "general **contractor**" and "builder" are synonymous.

((+3)) (5) "Partnership" means a business formed under Title 25 RCW.

(6) "Registration cancellation" means a written notice from the department that a contractor's action is in violation of this chapter and that the contractor's registration has been revoked.

(7) "Registration suspension" means a written notice from the department that a contractor's action is a violation of this chapter and that the contractor's registration has been suspended for a specified time, or until the **contractor**

shows evidence of compliance with this chapter.

(8) "Residential homeowner" means an individual person or persons owning or leasing real property:

(a) Upon which one single-family residence is to be built and in which the owner or lessee intends to reside upon completion of any construction; or

(b) Upon which there is a single-family residence to which improvements are to be made and in which the owner or lessee intends to reside upon completion of any construction.

(9) "Specialty contractor" means a contractor whose operations do not fall within the ((foregoing)) definition of "general contractor".

((+4)) (10) "Unregistered contractor" means a person, firm, ((or)) corporation, or other entity doing work as a contractor without being registered in compliance with this chapter. "Unregistered contractor" includes contractors whose registration is expired ((for more than thirty days beyond the renewal date or has been)), revoked, or suspended. "Unregistered contractor" does not include a contractor who has maintained a valid bond and the insurance or assigned account required by RCW 18.27.050, and whose registration has lapsed for thirty or fewer days.

((+5) "Department" means the department of labor and industries.

((+6) "Director" means the director of the department of labor and industries.

((+7)) (11) "Unsatisfied final judgment" means a judgment that has not been satisfied either through payment, court approved settlement, discharge in bankruptcy, or assignment under RCW 19.72.070.

(12) "Verification" means the receipt and duplication by the city, town, or county of a contractor registration card that is current on its face, checking the department's contractor registration data base, or calling the department to confirm that the contractor is registered.

Sec. 2. RCW 18.27.030 and 1998 c 279 s 3 are each amended to read as follows:

(1) An applicant for registration as a **contractor** shall submit an application under oath upon a form to be prescribed by the director and which shall include the following information pertaining to the applicant:

(a) Employer social security number.

(b) Unified business identifier number, if required by the department of revenue.

(c) Evidence of workers' compensation coverage for the applicant's employees working in Washington, as follows:

(i) The applicant's industrial insurance account number issued by the

department;

(ii) The applicant's self-insurer number issued by the department; or

(iii) For applicants domiciled in a state or province of Canada subject to an agreement entered into under RCW 51.12.120(7), as permitted by the agreement, filing a certificate of coverage issued by the agency that administers the workers' compensation law in the applicant's state or province of domicile certifying that the applicant has secured the payment of compensation under the other state's or province's workers' compensation law.

((~~(c)~~)) (d) Employment security department number.

((~~(d)~~)) (e) State excise tax registration number.

((~~(e)~~)) (f) Unified business identifier (UBI) account number may be substituted for the information required by ((~~(b)~~)) (c) of this subsection if the applicant will not employ employees in Washington, and by ((~~(c)~~)) (d) and ((~~(d)~~)) (e) of this subsection.

((~~(f)~~)) (g) Type of contracting activity, whether a general or a specialty **contractor** and if the latter, the type of specialty.

((~~(g)~~)) (h) The name and address of each partner if the applicant is a firm or partnership, or the name and address of the owner if the applicant is an individual proprietorship, or the name and address of the corporate officers and statutory agent, if any, if the applicant is a corporation or the name and address of all members of other business entities. The information contained in such application is a matter of public record and open to public inspection.

(2) The department may verify the workers' compensation coverage information provided by the applicant under subsection (1)((~~(b)~~)) (c) of this section, including but not limited to information regarding the coverage of an individual employee of the applicant. If coverage is provided under the laws of another state, the department may notify the other state that the applicant is employing employees in Washington.

(3)(a) The department shall deny an application for registration if: (i) The applicant has been previously ((~~registered~~)) performing work subject to this chapter as a sole proprietor, partnership, ((~~or~~)) corporation, or other entity and the department has notice that the applicant has an unsatisfied final judgment against him or her in an action based on this chapter ((~~that was incurred during a previous registration under this chapter~~)) or the applicant owes the department money for penalties assessed or fees due under this chapter as a result of a final judgment; (ii) the applicant was a principal or officer of a partnership, corporation, or other entity that either has an unsatisfied final judgment against it in an action that was incurred for work performed subject to

this chapter or owes the department money for penalties assessed or fees due under this chapter as a result of a final judgment; or (iii) the applicant does not have a valid unified business identifier number, if required by the department of revenue.

(b) The department shall suspend an active registration if (i) the department has notice that the registrant is a sole proprietor or a principal or officer of a registered **contractor** that has an unsatisfied final judgment against it for work within the scope of this chapter; or (ii) the applicant does not maintain a valid unified business identifier number, if required by the department of revenue.

(4) The department shall not deny an application or suspend a registration because of an unsatisfied final judgment if the applicant's or registrant's unsatisfied final judgment was determined by the director to be the result of the fraud or negligence of another party.

Sec. 3. RCW 18.27.040 and 1997 c 314 s 5 are each amended to read as follows:

(1) Each applicant shall file with the department a surety **bond** issued by a surety insurer who meets the requirements of chapter 48.28 RCW in the sum of ~~((six))~~ twelve thousand dollars if the applicant is a general **contractor** and ~~((four))~~ six thousand dollars if the applicant is a specialty **contractor**. If no valid **bond** is already on file with the department at the time the application is filed, a **bond** must accompany the registration application. The **bond** shall have the state of Washington named as obligee with good and sufficient surety in a form to be approved by the department. The **bond** shall be continuous and may be canceled by the surety upon the surety giving written notice to the director ~~((of its intent to cancel the bond))~~. A cancellation or revocation of the **bond** or withdrawal of the surety from the **bond** automatically suspends the registration issued to the registrant until a new **bond** or reinstatement notice has been filed and approved as provided in this section. The **bond** shall be conditioned that the applicant will pay all persons performing labor, including employee benefits, for the **contractor**, will pay all taxes and contributions due to the state of Washington, and will pay all persons furnishing labor or material or renting or supplying equipment to the **contractor** and will pay all amounts that may be adjudged against the **contractor** by reason of breach of contract including negligent or improper work in the conduct of the contracting business. A change in the name of a business or a change in the type of business entity shall not impair a **bond** for the purposes of this section so long as one of the original applicants for such **bond** maintains partial ownership in the business covered by

the **bond**.

(2) ~~((Any contractor registered as of July 1, 1997, who maintains such registration in accordance with this chapter shall be in compliance with this chapter until the next annual renewal of the contractor's certificate of registration. At that time))~~ At the time of initial registration or renewal, the **contractor** shall provide a **bond** ~~((, cash deposit,))~~ or other security deposit as required by this chapter and comply with all of the other provisions of this chapter before the department shall issue or renew the contractor's certificate of registration. Any contractor registered as of July 1, 2001, who maintains that registration in accordance with this chapter is in compliance with this chapter until the next renewal of the contractor's certificate of registration.

(3) Any person, firm, or corporation having a claim against the **contractor** for any of the items referred to in this section may bring suit upon the **bond** or deposit in the superior court of the county in which the work was done or of any county in which jurisdiction of the **contractor** may be had. The surety issuing the **bond** shall be named as a party to any suit upon the **bond**. Action upon the **bond** or deposit ~~((shall be commenced by filing the summons and complaint with the clerk of the appropriate superior court within one year from the date of expiration of the certificate of registration in force at the time))~~ brought by a residential homeowner for breach of contract by a party to the construction contract shall be commenced by filing the summons and complaint with the clerk of the appropriate superior court within two years from the date the claimed contract work was substantially completed or abandoned. Action upon the **bond** or deposit brought by any other authorized party shall be commenced by filing the summons and complaint with the clerk of the appropriate superior court within one year from the date the claimed labor was performed and benefits accrued, taxes and contributions owing the state of Washington became due, materials and equipment were furnished, or the claimed contract work was substantially completed or abandoned. Service of process in an action against the **contractor**, the contractor's **bond**, or the deposit shall be exclusively by service upon the department. Three copies of the summons and complaint and a fee ~~((of ten))~~ adopted by rule of not less than twenty dollars to cover the ((handling)) costs shall be served by registered or certified mail, or other delivery service requiring notice of receipt, upon the department at the time suit is started and the department shall maintain a record, available for public inspection, of all suits so commenced. Service is not complete until the department receives the ~~((ten-dollar))~~ fee and three copies of the summons and complaint. The service shall constitute service on the registrant and the surety for suit upon the **bond**

or deposit and the department shall transmit the summons and complaint or a copy thereof to the registrant at the address listed in the registrant's application and to the surety within (~~forty-eight hours~~) two days after it shall have been received.

(4) The surety upon the **bond** shall not be liable in an aggregate amount in excess of the amount named in the **bond** nor for any monetary penalty assessed pursuant to this chapter for an infraction. The liability of the surety shall not cumulate where the **bond** has been renewed, continued, reinstated, reissued or otherwise extended. The surety upon the **bond** may, upon notice to the department and the parties, tender to the clerk of the court having jurisdiction of the action an amount equal to the claims thereunder or the amount of the **bond** less the amount of judgments, if any, previously satisfied therefrom and to the extent of such tender the surety upon the **bond** shall be exonerated but if the actions commenced and pending at any one time exceed the amount of the **bond** then unimpaired, claims shall be satisfied from the **bond** in the following order:

- (a) Employee labor and claims of laborers, including employee benefits;
- (b) Claims for breach of contract by a party to the construction contract;
- (c) Registered or licensed subcontractors, material, and equipment;
- (d) Taxes and contributions due the state of Washington;
- (e) Any court costs, interest, and attorney's fees plaintiff may be entitled to recover. The surety is not liable for any amount in excess of the penal limit of its **bond**.

A payment made by the surety in good faith exonerates the **bond** to the extent of any payment made by the surety.

(5) The total amount paid from a **bond** or deposit required of a general contractor by this section to claimants other than residential homeowners must not exceed one-half of the **bond** amount. The total amount paid from a **bond** or deposit required of a specialty contractor by this section to claimants other than residential homeowners must not exceed one-half of the **bond** amount or four thousand dollars, whichever is greater.

(6) The prevailing party in an action filed under this section against the contractor and contractor's **bond** or deposit, for breach of contract by a party to a construction contract, is entitled to costs, interest, and reasonable attorneys' fees. The surety upon the **bond** is not liable in an aggregate amount in excess of the amount named in the **bond** nor for any monetary penalty assessed pursuant to this chapter for an infraction.

(7) If a final judgment impairs the liability of the surety upon the **bond** so furnished that there (~~shall not be~~) is not in effect a **bond** (~~(undertaking)~~) in

the full amount prescribed in this section, (~~the department shall suspend~~) the registration of the **contractor** is automatically suspended until the **bond** liability in the required amount unimpaired by unsatisfied judgment claims is furnished. (~~If the bond becomes fully impaired, a new bond must be furnished at the rates prescribed by this section.~~

~~---(67))~~ (8) In lieu of the surety **bond** required by this section the **contractor** may file with the department a deposit consisting of cash or other security acceptable to the department.

~~((77))~~ (9) Any person having filed and served a summons and complaint as required by this section having an unsatisfied final judgment against the registrant for any items referred to in this section may execute upon the security held by the department by serving a certified copy of the unsatisfied final judgment by registered or certified mail upon the department within one year of the date of entry of such judgment. Upon the receipt of service of such certified copy the department shall pay or order paid from the deposit, through the registry of the superior court which rendered judgment, towards the amount of the unsatisfied judgment. The priority of payment by the department shall be the order of receipt by the department, but the department shall have no liability for payment in excess of the amount of the deposit.

~~((88))~~ (10) The director may require an applicant applying to renew or reinstate a registration or applying for a new registration to file a **bond** of up to three times the normally required amount, if the director determines that an applicant, or a previous registration of a corporate officer, owner, or partner of a current applicant, has had in the past five years a total of six final judgments in actions under this chapter involving a residential single-family dwelling on two or more different structures.

(11) The director may adopt rules necessary for the proper administration of the security.

Sec. 4. RCW 18.27.050 and 1987 c 303 s 1 are each amended to read as follows:

(1) At the time of registration and subsequent reregistration, the applicant shall furnish insurance or financial responsibility in the form of an assigned account in the amount of ~~((twenty))~~ fifty thousand dollars for injury or damages to property, and ~~((fifty))~~ one hundred thousand dollars for injury or damage including death to any one person, and ~~((one))~~ two hundred thousand dollars for injury or damage including death to more than one person (~~or financial responsibility to satisfy these amounts~~)).

(2) (~~Failure to maintain insurance or financial responsibility relative to~~

~~the contractor's activities shall be cause to suspend or deny the contractor his or her or their registration.))~~ An expiration, cancellation, or revocation of the insurance policy or withdrawal of the insurer from the insurance policy automatically suspends the registration issued to the registrant until a new insurance policy or reinstatement notice has been filed and approved as provided in this section.

(3)(a) Proof of financial responsibility authorized in this section may be given by providing, in the amount required by subsection (1) of this section, an assigned account acceptable to the department. The assigned account shall be held by the department to satisfy any execution on a judgment issued against the **contractor** for damage to property or injury or death to any person occurring in the contractor's contracting operations, according to the provisions of the assigned account agreement. The department shall have no liability for payment in excess of the amount of the assigned account.

(b) The assigned account filed with the director as proof of financial responsibility shall be canceled at the expiration of three years after:

(i) The contractor's registration has expired or been revoked; or

(ii) The **contractor** has furnished proof of insurance as required by subsection (1) of this section;

if, in either case, no legal action has been instituted against the **contractor** or on the account at the expiration of the three-year period.

(c) If a **contractor** chooses to file an assigned account as authorized in this section, the **contractor** shall, on any contracting project, notify each person with whom the **contractor** enters into a contract or to whom the **contractor** submits a bid that the **contractor** has filed an assigned account in lieu of insurance and that recovery from the account for any claim against the **contractor** for property damage or personal injury or death occurring in the project requires the claimant to obtain a court judgment.

Sec. 5. RCW 18.27.060 and 1997 c 314 s 6 and 1997 c 58 s 817 are each reenacted and amended to read as follows:

(1) A certificate of registration shall be valid for (~~one~~) two years and shall be renewed on or before the expiration date. The department shall issue to the applicant a certificate of registration upon compliance with the registration requirements of this chapter.

(2) If the department approves an application, it shall issue a certificate of registration to the applicant. (~~The certificate shall be valid for:~~

~~(a) One year;~~

~~(b) Until the bond expires; or~~

~~— (c) Until the insurance expires, whichever comes first. The department shall place the expiration date on the certificate.~~

~~— (3) A contractor may supply a short-term bond or insurance policy to bring its registration period to the full one year.~~

~~— (4))~~ (3) If a contractor's surety **bond** or other security has an unsatisfied judgment against it or is canceled, or if the contractor's insurance policy is canceled, the contractor's registration shall be automatically suspended on the effective date of the impairment or cancellation. The department shall mail notice of the suspension to the contractor's address on the certificate of registration by certified and by first class mail within ~~((forty-eight hours))~~ two days after suspension.

~~((5))~~ (4) Renewal of registration is valid on the date the department receives the required fee and proof of **bond** and liability insurance, if sent by certified mail or other means requiring proof of delivery. The receipt or proof of delivery shall serve as the contractor's proof of renewed registration until he or she receives verification from the department.

~~((6))~~ (5) The department shall immediately suspend the certificate of registration of a **contractor** who has been certified by the department of social and health services as a person who is not in compliance with a support order or a residential or visitation order as provided in RCW 74.20A.320. The certificate of registration shall not be reissued or renewed unless the person provides to the department a release from the department of social and health services stating that he or she is in compliance with the order and the person has continued to meet all other requirements for certification during the suspension.

NEW SECTION. **Sec. 6.** A new section is added to chapter 18.27 RCW to read as follows:

(1) If an unregistered **contractor** defaults in a payment, penalty, or fine due to the department, the director or the director's designee may issue a notice of assessment certifying the amount due. The notice must be served upon the unregistered **contractor** by mailing the notice to the unregistered **contractor** by certified mail to the unregistered contractor's last known address or served in the manner prescribed for the service of a summons in a civil action.

(2) A notice of assessment becomes final thirty days from the date the notice was served upon the unregistered **contractor** unless a written request for reconsideration is filed with the department or an appeal is filed in a court of competent jurisdiction in the manner specified in RCW 34.05.510 through 34.05.598. The request for reconsideration must set forth with particularity the reason for the unregistered contractor's request. The department, within thirty

days after receiving a written request for reconsideration, may modify or reverse a notice of assessment, or may hold a notice of assessment in abeyance pending further investigation. If a final decision of a court in favor of the department is not appealed within the time allowed by law, then the amount of the unappealed assessment, or such amount of the assessment as is found due by the final decision of the court, is final.

(3) The director or the director's designee may file with the clerk of any county within the state, a warrant in the amount of the notice of assessment, plus interest, penalties, and a filing fee of twenty dollars. The clerk of the county in which the warrant is filed shall immediately designate a superior court cause number for the warrant, and the clerk shall cause to be entered in the judgment docket under the superior court cause number assigned to the warrant, the name of the unregistered **contractor** mentioned in the warrant, the amount of payment, penalty, fine due on it, or filing fee, and the date when the warrant was filed. The aggregate amount of the warrant as docketed shall become a lien upon the title to, and interest in, all real and personal property of the unregistered **contractor** against whom the warrant is issued, the same as a judgment in a civil case docketed in the office of the clerk. The sheriff shall proceed upon the warrant in all respects and with like effect as prescribed by law with respect to execution or other process issued against rights or property upon judgment in a court of competent jurisdiction. The warrant so docketed is sufficient to support the issuance of writs of garnishment in favor of the state in a manner provided by law in case of judgment, wholly or partially unsatisfied. The clerk of the court is entitled to a filing fee which will be added to the amount of the warrant. A copy of the warrant shall be mailed to the unregistered **contractor** within three days of filing with the clerk.

(4) The director or the director's designee may issue to any person, firm, corporation, other entity, municipal corporation, political subdivision of the state, a public corporation, or any agency of the state, a notice and order to withhold and deliver property of any kind whatsoever when he or she has reason to believe that there is in the possession of the person, firm, corporation, other entity, municipal corporation, political subdivision of the state, public corporation, or agency of the state, property that is or will become due, owing, or belonging to an unregistered **contractor** upon whom a notice of assessment has been served by the department for payments, penalties, or fines due to the department. The effect of a notice and order is continuous from the date the notice and order is first made until the liability out of which the notice and order arose is satisfied or becomes unenforceable because of lapse of time. The

department shall release the notice and order when the liability out of which the notice and order arose is satisfied or becomes unenforceable by reason of lapse of time and shall notify the person against whom the notice and order was made that the notice and order has been released.

The notice and order to withhold and deliver must be served by the sheriff of the county or by the sheriff's deputy, by certified mail, return receipt requested, or by an authorized representative of the director. A person, firm, corporation, other entity, municipal corporation, political subdivision of the state, public corporation, or agency of the state upon whom service has been made shall answer the notice within twenty days exclusive of the day of service, under oath and in writing, and shall make true answers to the matters inquired of in the notice and order. Upon service of the notice and order, if the party served possesses any property that may be subject to the claim of the department, the party shall promptly deliver the property to the director or the director's authorized representative. The director shall hold the property in trust for application on the unregistered contractor's indebtedness to the department, or for return without interest, in accordance with a final determination of a petition for review. In the alternative, the party shall furnish a good and sufficient surety **bond** satisfactory to the director conditioned upon final determination of liability. If a party served and named in the notice fails to answer the notice within the time prescribed in this section, the court may render judgment by default against the party for the full amount claimed by the director in the notice, together with costs. If a notice is served upon an unregistered **contractor** and the property subject to it is wages, the unregistered **contractor** may assert in the answer all exemptions provided for by chapter 6.27 RCW to which the wage earner is entitled.

(5) In addition to the procedure for collection of a payment, penalty, or fine due to the department as set forth in this section, the department may recover civil penalties imposed under this chapter in a civil action in the name of the department brought in a court of competent jurisdiction of the county where the violation is alleged to have occurred.

Sec. 7. RCW 18.27.090 and 1997 c 314 s 8 are each amended to read as follows:

The registration provisions of this chapter ((does)) do not apply to:

(1) An authorized representative of the United States government, the state of Washington, or any incorporated city, town, county, township, irrigation district, reclamation district, or other municipal or political corporation or subdivision of this state;

(2) Officers of a court when they are acting within the scope of their office;

(3) Public utilities operating under the regulations of the utilities and transportation commission in construction, maintenance, or development work incidental to their own business;

(4) Any construction, repair, or operation incidental to the discovering or producing of petroleum or gas, or the drilling, testing, abandoning, or other operation of any petroleum or gas well or any surface or underground mine or mineral deposit when performed by an owner or lessee;

(5) The sale or installation of any finished products, materials, or articles of merchandise (~~((which))~~) that are not actually fabricated into and do not become a permanent fixed part of a structure;

(6) Any construction, alteration, improvement, or repair of personal property (~~((, except this chapter shall apply to all mobile/manufactured housing. A mobile/manufactured home may be installed, set up, or repaired by the registered or legal owner, by a contractor registered under this chapter))~~) performed by the registered or legal owner, or by a mobile/manufactured home retail dealer or manufacturer licensed under chapter 46.70 RCW who shall warranty service and repairs under chapter 46.70 RCW;

(7) Any construction, alteration, improvement, or repair carried on within the limits and boundaries of any site or reservation under the legal jurisdiction of the federal government;

(8) Any person who only furnished materials, supplies, or equipment without fabricating them into, or consuming them in the performance of, the work of the **contractor**;

(9) Any work or operation on one undertaking or project by one or more contracts, the aggregate contract price of which for labor and materials and all other items is less than five hundred dollars, such work or operations being considered as of a casual, minor, or inconsequential nature. The exemption prescribed in this subsection does not apply in any instance wherein the work or construction is only a part of a larger or major operation, whether undertaken by the same or a different **contractor**, or in which a division of the operation is made into contracts of amounts less than five hundred dollars for the purpose of evasion of this chapter or otherwise. The exemption prescribed in this subsection does not apply to a person who advertises or puts out any sign or card or other device which might indicate to the public that he or she is a **contractor**, or that he or she is qualified to engage in the business of **contractor**;

(10) Any construction or operation incidental to the construction and repair of irrigation and drainage ditches of regularly constituted irrigation districts or reclamation districts; or to farming, dairying, agriculture, viticulture, horticulture, or stock or poultry raising; or to clearing or other work upon land in rural districts for fire prevention purposes; except when any of the above work is performed by a registered **contractor**;

(11) An owner who contracts for a project with a registered **contractor**, except that this exemption shall not deprive the owner of the protections of this chapter against registered and unregistered contractors;

(12) Any person working on his or her own property, whether occupied by him or her or not, and any person working on his or her personal residence, whether owned by him or her or not but this exemption shall not apply to any person otherwise covered by this chapter who constructs an improvement on his or her own property with the intention and for the purpose of selling the improved property;

(13) Owners of commercial properties who use their own employees to do maintenance, repair, and alteration work in or upon their own properties;

(14) A licensed architect or civil or professional engineer acting solely in his or her professional capacity, an electrician licensed under the laws of the state of Washington, or a plumber licensed under the laws of the state of Washington or licensed by a political subdivision of the state of Washington while operating within the boundaries of such political subdivision. The exemption provided in this subsection is applicable only when the licensee is operating within the scope of his or her license;

(15) Any person who engages in the activities herein regulated as an employee of a registered **contractor** with wages as his or her sole compensation or as an employee with wages as his or her sole compensation;

(16) Contractors on highway projects who have been prequalified as required by RCW 47.28.070, with the department of transportation to perform highway construction, reconstruction, or maintenance work;

(17) A mobile/manufactured home dealer or manufacturer who subcontracts the installation, set-up, or repair work to actively registered contractors. This exemption only applies to the installation, set-up, or repair of the mobile/manufactured homes that were manufactured or sold by the mobile/manufactured home dealer or manufacturer.

Sec. 8. RCW 18.27.100 and 1997 c 314 s 9 are each amended to read as follows:

(1) Except as provided in RCW 18.27.065 for partnerships and joint ventures, no person who has registered under one name as provided in this chapter shall

engage in the business, or act in the capacity, of a **contractor** under any other name unless such name also is registered under this chapter.

(2) All advertising and all contracts, correspondence, cards, signs, posters, papers, and documents which show a contractor's name or address shall show the contractor's name or address as registered under this chapter.

(3)(a) All advertising that shows the contractor's name or address shall show the contractor's current registration number. The registration number may be omitted in an alphabetized listing of registered contractors stating only the name, address, and telephone number: PROVIDED, That signs on motor vehicles subject to RCW 46.16.010 and on-premise signs shall not constitute advertising as provided in this section. All materials used to directly solicit business from retail customers who are not businesses shall show the contractor's current registration number. A **contractor** shall not use a false or expired registration number in purchasing or offering to purchase an advertisement for which a **contractor** registration number is required. Advertising by airwave transmission shall not be subject to this subsection (3)(a).

(b) The director may issue a subpoena to any person or entity selling any advertising subject to this section for the name, address, and telephone number provided to the seller of the advertising by the purchaser of the advertising. The subpoena must have enclosed a stamped, self-addressed envelope and blank form to be filled out by the seller of the advertising. If the seller of the advertising has the information on file, the seller shall, within a reasonable time, return the completed form to the department. The subpoena must be issued (~~((before forty-eight hours))~~) no more than two days after the expiration of the issue or publication containing the advertising or after the broadcast of the advertising. The good-faith compliance by a seller of advertising with a written request of the department for information concerning the purchaser of advertising shall constitute a complete defense to any civil or criminal action brought against the seller of advertising arising from such compliance. Advertising by airwave or electronic transmission is subject to this subsection (3)(b).

(4) No **contractor** shall advertise that he or she is bonded and insured because of the **bond** required to be filed and sufficiency of insurance as provided in this chapter.

(5) A **contractor** shall not falsify a registration number and use it, or use an expired registration number, in connection with any solicitation or identification as a **contractor**. All individual contractors and all partners, associates, agents, salesmen, solicitors, officers, and employees of contractors shall use their true names and addresses at all times while engaged in the

business or capacity of a **contractor** or activities related thereto.

(6) Any advertising by a person, firm, or corporation soliciting work as a **contractor** when that person, firm, or corporation is not registered pursuant to this chapter is a violation of this chapter.

(7)(a) The finding of a violation of this section by the director at a hearing held in accordance with the Administrative Procedure Act, chapter 34.05 RCW, shall subject the person committing the violation to a penalty of not more than ((five)) ten thousand dollars as determined by the director.

(b) Penalties under this section shall not apply to a violation determined to be an inadvertent error.

Sec. 9. RCW 18.27.114 and 1997 c 314 s 12 are each amended to read as follows:

(1) Any **contractor** agreeing to perform any contracting project: (a) For the repair, alteration, or construction of four or fewer residential units or accessory structures on such residential property when the bid or contract price totals one thousand dollars or more; or (b) for the repair, alteration, or construction of a commercial building when the bid or contract price totals one thousand dollars or more but less than sixty thousand dollars, must provide the customer with the following disclosure statement in substantially the following form using lower case and upper case twelve-point and bold type where appropriate, prior to starting work on the project:

"NOTICE TO CUSTOMER

~~((This **contractor** is registered with the state of Washington, registration no., as a general/specialty **contractor** and has posted with the state a **bond** or cash deposit of \$6,000/\$4,000 for the purpose of satisfying claims against the **contractor** for negligent or improper work or breach of contract in the conduct of the contractor's business. The expiration date of this contractor's registration is This **bond** or cash deposit may not be sufficient to cover a claim which might arise from the work done under your contract. If any supplier of materials used in your construction project or any employee of the **contractor** or subcontractor is not paid by the **contractor** or subcontractor on your job, your property may be liened to force payment. If you wish additional protection, you may request the **contractor** to provide you with original "lien release" documents from each supplier or subcontractor on your project. The **contractor** is required to provide you with further information about lien release documents if you request it. General information is also available from the department of labor and~~

industries."))

This contractor is registered with the state of Washington, registration no. . . . , and has posted with the state a bond or deposit of for the purpose of satisfying claims against the contractor for breach of contract including negligent or improper work in the conduct of the contractor's business. The expiration date of this contractor's registration is

THIS BOND OR DEPOSIT MIGHT NOT BE SUFFICIENT TO COVER A CLAIM THAT MIGHT ARISE FROM THE WORK DONE UNDER YOUR CONTRACT.

This bond or deposit is not for your exclusive use because it covers all work performed by this contractor. The bond or deposit is intended to pay valid claims up to that you and other customers, suppliers, subcontractors, or taxing authorities may have.

FOR GREATER PROTECTION YOU MAY WITHHOLD A PERCENTAGE OF YOUR CONTRACT.

You may withhold a contractually defined percentage of your construction contract as retainage for a stated period of time to provide protection to you and help insure that your project will be completed as required by your contract.

YOUR PROPERTY MAY BE LIENED.

If a supplier of materials used in your construction project or an employee or subcontractor of your contractor or subcontractors is not paid, your property may be liened to force payment and you could pay twice for the same work.

FOR ADDITIONAL PROTECTION, YOU MAY REQUEST THE CONTRACTOR TO PROVIDE YOU WITH ORIGINAL "LIEN RELEASE" DOCUMENTS FROM EACH SUPPLIER OR SUBCONTRACTOR ON YOUR PROJECT.

The contractor is required to provide you with further information about lien release documents if you request it. General information is also available from the state Department of Labor and Industries."

(2) A contractor subject to this section shall notify any consumer to whom notice is required under subsection (1) of this section if the contractor's registration has expired or is revoked or suspended by the department prior to completion or other termination of the contract with the consumer.

(3) No contractor subject to this section may bring or maintain any lien claim under chapter 60.04 RCW based on any contract to which this section applies without alleging and proving that the contractor has provided the customer with a copy of the disclosure statement as required in subsection (1) of this section.

(4) This section does not apply to contracts authorized under chapter 39.04

RCW or to contractors contracting with other contractors.

(5) Failure to comply with this section shall constitute an infraction under the provisions of this chapter.

(6) The department shall produce model disclosure statements, and public service announcements detailing the information needed to assist contractors and contractors' customers to comply under this section. As necessary, the department shall periodically update these education materials.

Sec. 10. RCW 18.27.310 and 1993 c 454 s 10 are each amended to read as follows:

(1) The administrative law judge shall conduct contractors' notice of infraction cases pursuant to chapter 34.05 RCW:

(2) The burden of proof is on the department to establish the commission of the infraction by a preponderance of the evidence. The notice of infraction shall be dismissed if the defendant establishes that, at the time the ~~((notice was issued))~~ work was performed, the defendant was registered by the department, without suspension, or was exempt from registration.

(3) After consideration of the evidence and argument, the administrative law judge shall determine whether the infraction was committed. If it has not been established that the infraction was committed, an order dismissing the notice shall be entered in the record of the proceedings. If it has been established that the infraction was committed, the administrative law judge shall issue findings of fact and conclusions of law in its decision and order determining whether the infraction was committed.

(4) An appeal from the administrative law judge's determination or order shall be to the superior court. The decision of the superior court is subject only to discretionary review pursuant to Rule 2.3 of the Rules of Appellate Procedure.

Sec. 11. RCW 18.27.320 and 1993 c 454 s 11 are each amended to read as follows:

The administrative law judge shall dismiss the notice of infraction at any time upon written notification from the department that the **contractor** named in the notice of infraction was registered, without suspension, at the time the ~~((notice of infraction was issued))~~ work was performed.

NEW SECTION. **Sec. 12.** A new section is added to chapter 18.27 RCW to read as follows:

(1) The department shall use reasonable means, including working cooperatively with construction industry, financial institution, local government, consumer, media, and other interested organizations and individuals,

to increase:

(a) Consumer awareness of the requirements of this chapter and the methods available to consumers to protect themselves against loss; and

(b) **Contractor** awareness of the obligations imposed on contractors by this chapter.

(2) The department shall accomplish the tasks listed in this section within existing resources, including but not limited to fees charged under RCW 18.27.075.

NEW SECTION. **Sec. 13.** A new section is added to chapter 18.27 RCW to read as follows:

(1) The legislature finds that it is contrary to public policy to allow unregistered contractors to continue doing business illegally.

(2) The department of labor and industries, the employment security department, and the department of revenue shall establish an unregistered contractors enforcement team. The team shall develop a written plan to coordinate the activities of the participating agencies to enforce the state's **contractor** registration laws and rules and other state laws and rules deemed appropriate by the team. In developing the plan, the team shall seek the input and advice of interested stakeholders who support the work of the team.

(3) The director or the director's designee shall call the initial meeting of the unregistered contractors enforcement team by September 1, 2001. The team shall complete the plan and forward it to the appropriate standing committees of the legislature and to the departments that contribute members to the team by December 1, 2001.

(4) The department of labor and industries, the employment security department, and the department of revenue shall accomplish the tasks listed in this section within existing resources, including but not limited to fees charged under RCW 18.27.075.

Sec. 14. RCW 18.27.075 and 1983 c 74 s 2 are each amended to read as follows:

The department (~~may not set~~) shall charge a fee (~~higher than fifty~~) of one hundred dollars for issuing or renewing a certificate of registration during the 2001-2003 biennium. The department shall revise this amount at least once every two years for the purpose of recognizing economic changes as reflected by the fiscal growth factor under chapter 43.135 RCW."

Correct the title.

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